

EXHIBIT A

MICHAEL VECCHIONE
JABBAR COLLINS vs CITY OF NEW YORK

June 21, 2013

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

JABBAR COLLINS,

Plaintiff,

CIVIL ACTION

-against-

No. 11CV00766

THE CITY OF NEW YORK; MICHAEL F.
VECCHIONE, BRIAN MAHER, STEPHEN
BONDOR, SHOLOM TWERSKY, ANTHONY
D'ANGELO, MELANIE MARMER, MORGAN J.
DENNEHY, VIRGINIA C. MODEST, and
JODI MANDEL, as employees of the
Kings County District Attorney's
Office and Individually, and VINCENT
GERECITANO and JOSE R. HERNANDEZ,
Individually and as members of the
New York City Police Department,

Defendants.

-----X

June 21, 2013
9:35 a.m.

Videotaped deposition of MICHAEL F. VECCHIONE,
taken by Plaintiff, at the New York Bar
Association, 42 West 44th Street, New York,
New York, before Anneliese R. Tursi, a
Registered Professional Reporter and Notary
Public within and for the State of New York.

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STATE OF NEW YORK
COURT OF CLAIMS

-----x

JABBAR COLLINS,

Claimant,

CLAIM NO.
119586

-against-

THE STATE OF NEW YORK,

Respondent.

-----x

June 21, 2013
9:35 a.m.

Videotaped deposition of MICHAEL F. VECCHIONE,
taken by Plaintiff, at the New York Bar
Association, 42 West 44th Street, New York,
New York 10019, before Anneliese R. Tursi, a
Registered Professional Reporter and Notary
Public within and for the State of New York.

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A P P E A R A N C E S

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CHARLES J. HYNES, DISTRICT ATTORNEY

OFFICE OF THE DISTRICT ATTORNEY, KINGS COUNTY

350 Jay Street

Brooklyn, New York 11201-2908

BY: DINO G. AMOROSO, ESQ.,
DEPUTY DISTRICT ATTORNEY
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ASSISTANT DISTRICT ATTORNEY
718-250-2211
amorosod@brooklynda.org

ALSO PRESENT:

JABBAR COLLINS

KEVIN GALLAGHER
Videographer

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED

by and between the attorneys for the
respective parties herein that filing
and sealing be and the same are hereby
waived.

IT IS FURTHER STIPULATED AND

AGREED that all objections, except as to
the form of the question, shall be
reserved to the time of the trial.

IT IS FURTHER STIPULATED AND

AGREED that the within deposition may be
signed and sworn to before any officer
authorized to administer an oath with
the same force and effect as if signed
and sworn to before the Court.

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1 M. F. VECCHIONE

2 THE VIDEOGRAPHER: We are now
3 going on the record at approximately
4 9:35 a.m. This is disk No. 1 in the
5 videotaped deposition of Michael
6 Vecchione --

7 THE WITNESS: Close enough.

8 THE VIDEOGRAPHER: -- in the
9 matter of Jabbar Collins versus the City
10 of New York, being heard before the US
11 District Court, Eastern District of New
12 York. The case number is 11CV00766.

13 This deposition is being held at
14 the New York Bar Association, 42 44th
15 Street, New York, New York on June 21st,
16 2013.

17 My name is Kevin Gallagher. I am
18 the videographer. The court reporter is
19 Anneliese Tursi.

20 And counsel will now introduce
21 themselves for the record.

22 MR. RUDIN: For the plaintiff,
23 Joel Rudin. With me is Terri Rosenblatt
24 and Jabbar Collins.

25 MR. LARKIN: For the defendants



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1 M. F. VECCHIONE
2 City of New York, Vincent Gerecitano and
3 Jose Hernandez, and also representing
4 the witness, Arthur Larkin, New York
5 City Law Department. With me is
6 Elizabeth Krasnow.

7 MS. LICHSTEIN: Toni Lichstein
8 from the Kings County District
9 Attorney's office.

10 MR. AMOROSO: Dino Amoroso on
11 behalf of the Kings County District
12 Attorney's office.

13 MS. POLSTEIN: Janet Polstein,
14 Assistant Attorney General on behalf of
15 the State of New York in the Court of
16 the Claims action. With me is Amanda
17 Asaro who is an intern in our office.

18 THE VIDEOGRAPHER: The court
19 reporter will now swear the witness.

20 M I C H A E L F. V E C C H I O N E,
21 Office of the District Attorney, Kings
22 County, 350 Jay Street, Brooklyn, New
23 York 11201-2908, having been first duly
24 sworn/affirmed by the Notary Public
25 (Anneliese R. Tursi), was examined and

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1 M. F. VECCHIONE

2 testified as follows:

3 MR. RUDIN: Ready?

4 THE VIDEOGRAPHER: Yes, sir.

5 EXAMINATION BY MR. RUDIN:

6 Q. Mr. Vecchione, my name is Joel
7 Rudin. I represent the plaintiff in two
8 actions, one action against the City of New
9 York and a number of individuals in federal
10 court, and another action in the New York
11 State Court of Claims.

12 I'm going to be asking you some
13 questions this morning that I believe are
14 relevant to these two actions. If I ask you a
15 question that you do not understand or that is
16 unclear to you, do you understand that you
17 may, and, in fact, should ask me to rephrase
18 it or clarify it?

19 A. I do.

20 Q. If you give an answer that upon
21 reflection you believe is in some way
22 inaccurate or incomplete, do you understand
23 that you may supplement or clarify your
24 answer?

25 A. I do.



1 M. F. VECCHIONE

2 Q. Is there any physical or medical
3 reason today that you are not able to give
4 your best recollection of the events that are
5 relevant to these actions?

6 A. No.

7 Q. Prior to today's deposition, did
8 you review any documents to help you prepare?

9 A. I did.

10 Q. What did you review?

11 MR. LARKIN: Objection. The
12 selection of documents is privileged.
13 If you want to show him a document and
14 ask him whether he has seen it or
15 whether he reviewed it to prepare for
16 today's deposition, that's fine.

17 Q. When is the last time, if at all,
18 you reviewed the trial testimony in this case?

19 A. Last Sunday.

20 Q. And did you review the entire
21 transcript?

22 A. The hearing minutes, the Wade
23 hearing minutes, as well as the trial
24 transcript, yes.

25 Q. And when was the last time, if at

1 M. F. VECCHIONE

2 all, that you reviewed the police reports in
3 connection with the Collins case?

4 MR. LARKIN: Form objection.

5 You can answer.

6 A. I reviewed selected police reports
7 that were shown to me during prep sessions
8 with the Corporation Counsel, and that was
9 this past week.

10 Q. Did they include DD-5 reports?

11 A. Some.

12 Q. When is the last time you reviewed
13 any motions, either 440 motions seeking to
14 vacate Mr. Collins' conviction, or federal
15 habeas corpus motions?

16 A. Okay, so that's two questions. So
17 let me break it up.

18 The 440, back when it was filed I
19 think 2006.

20 I don't believe I have ever
21 reviewed the habeas corpus motion at all.

22 Q. Did you review any of the 440
23 motion papers more recently than 2006?

24 A. No.

25 MR. LARKIN: Well, objection to

1 M. F. VECCHIONE

2 the form. You are talking about Mr.
3 Collins' motion or any of the opposition
4 papers or any papers filed in connection
5 with the 440? I just want to be clear.

6 Q. Since 2006 have you reviewed any
7 of the motion papers filed by either side in
8 connection with Mr. Collins' 440 motion?

9 A. I have reviewed just my
10 affirmation that was part of the 440 answer.
11 Other than that, no.

12 Q. On how many occasions have you met
13 with attorneys from the Corporation Counsel's
14 office to prepare for your deposition?

15 A. Three times.

16 Q. When is the most recent time?

17 A. Yesterday.

18 Q. For what period of time?

19 A. Six hours.

20 Q. Who was present?

21 A. Mr. Larkin, Ms. Krasnow, Ms.
22 Lichstein, Mr. Amoroso, and, of course,
23 myself.

24 Q. In what capacity was Mr. Amoroso
25 present?

1 M. F. VECCHIONE

2 MR. LARKIN: Objection to form.

3 Q. What is your understanding of the
4 capacity in which Mr. Amoroso was present?

5 A. He is a --

6 MR. LARKIN: Same objection.

7 You can answer. I'm sorry.

8 A. Excuse me. Representing the
9 District Attorney's office of which I am a
10 member.

11 Q. Do you consider him to be your
12 attorney?

13 A. No.

14 Q. Do you consider Ms. Lichstein to
15 be your attorney?

16 A. No.

17 Q. When prior to yesterday did you
18 meet with attorneys from the Corporation
19 Counsel's office?

20 A. Wednesday.

21 Q. For what period of time?

22 A. About four hours.

23 Q. Who was present?

24 A. Same -- no, I'm sorry, with the
25 exception of Mr. Larkin, it was the same three

1 M. F. VECCHIONE

2 people, Ms. Krasnow, Ms. Lichstein and Mr.
3 Amoroso.

4 Q. And before Wednesday?

5 A. Tuesday.

6 Q. For what period of time?

7 A. About seven hours.

8 Q. Who was present on that occasion?

9 A. The four people that I mentioned
10 who were present on yesterday.

11 Q. And prior to Tuesday did you ever
12 meet with Corporation Counsel to prepare for
13 your deposition?

14 A. No.

15 Q. When were you first hired to work
16 at the Brooklyn DA's office?

17 A. In August of 1973.

18 Q. And until what year were you
19 employed there?

20 A. Until 1980.

21 Q. And what did you do then?

22 A. I went to work at the New York
23 City Police Department. I was the head of the
24 department advocate's office.

25 Q. And when did you leave that

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2 position?

3 A. In 1982.

4 Q. And what did you do then?

5 A. I started my own law practice with
6 a partner by the name of Arnold Kriss and we
7 were a general practice firm, although my
8 specialty was criminal defense.

9 Q. And until when were you in that
10 practice?

11 A. 1992. Oh, I'm sorry. That
12 practice?

13 Q. Yes.

14 A. 1991. I was on -- I was by myself
15 for one year from '91 to '92, the same kind of
16 work, and then I went to work at the DA's
17 office in 1992.

18 Q. Who hired you to work at the DA's
19 office in 1992?

20 A. Well, the District Attorney does
21 the hiring, so it is District Attorney Hynes.

22 Q. And did you have any understanding
23 with District Attorney Hynes about what your
24 role would be at the DA's office once you
25 began working there?

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2 A. Yes.

3 Q. What was your understanding?

4 A. I was hired as, initially as a
5 trial assistant, but before I actually stepped
6 foot in the office I went to, I was moved
7 from -- well, I started in the homicide
8 bureau. That's what I started as. And my
9 role was trial assistant and deputy bureau
10 chief of the homicide bureau.

11 Q. Did you have any understanding
12 when Mr. Hynes hired you in 1992 concerning
13 whether you would be eventually made head of
14 the homicide bureau?

15 A. No.

16 MR. LARKIN: Objection to the
17 form.

18 A. No. I'm sorry.

19 Q. Were you made head of the homicide
20 bureau at some point?

21 A. I was in charge of the homicide
22 bureau, yes, at some point.

23 Q. When did that happen?

24 A. My best recollection is March of
25 '92.

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2 Q. When did you begin working in the
3 DA's office in '92?

4 A. January.

5 Q. So within two months you were head
6 of the homicide bureau?

7 A. Three months.

8 Q. What were your responsibilities as
9 head of the homicide bureau?

10 A. Was to supervise the assistant
11 district attorneys and support staff that
12 worked in that bureau and managed and tried
13 and presented the cases that were accepted by
14 the homicide bureau, brought into the homicide
15 bureau.

16 Q. How many ADAs were assigned to the
17 homicide bureau when you were in charge of it?

18 A. I honestly don't recall.

19 Q. Was it more than ten?

20 MR. LARKIN: Well, objection to
21 the form. Are you talking about when he
22 first became head of the --

23 A. When I first became head?

24 MR. LARKIN: -- bureau in 1992?

25 MR. RUDIN: Fine.

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2 MR. LARKIN: March?

3 MR. RUDIN: Yes.

4 A. I think it was more than ten, but
5 it was not much more than ten.

6 Q. How about March of '95, how many
7 ADAs were in the homicide bureau?

8 A. March of '95?

9 Q. Yes.

10 A. I don't have any recollection of
11 that.

12 Q. Were there any individuals in 1994
13 or 1995 who were deputy bureau chiefs under
14 your supervision?

15 A. Yes.

16 Q. Who were they?

17 A. Jon Besunder, and at some point
18 Mark Hale.

19 Q. And did each of them work under
20 your supervision?

21 A. Yes.

22 Q. What were Mr. Besunder's
23 responsibilities?

24 A. Mr. Besunder's responsibilities
25 were primarily the riding program, supervision

1 M. F. VECCHIONE
2 of grand jury presentations and the
3 supervision of the assistant DAs who were
4 assigned to present cases to the grand jury.

5 Q. And Mr. Hale?

6 MR. LARKIN: Just objection to
7 form. You mean when Mr. Hale was a
8 deputy in 1994, '95?

9 MR. RUDIN: Yes.

10 MR. LARKIN: That's your question.
11 Okay.

12 A. What was Mr. Hale's --

13 Q. Responsibilities?

14 A. Deputy bureau chief. He would
15 give trial advice, he would supervise trials.
16 That's about the best that I can recall.

17 Q. And what were your
18 responsibilities?

19 A. I supervised them all.

20 Q. Did you give trial advice?

21 A. On occasion.

22 Q. Who did you report to when you
23 were chief of the homicide bureau?

24 MR. LARKIN: Just objection to
25 form. I don't know if it was called the

1 M. F. VECCHIONE

2 homicide bureau at the time. It may
3 have been called trial cadre. You may
4 want to clarify that.

5 A. Yes, I would qualify it.

6 Sometime after I became chief of
7 the homicide bureau the name was actually
8 changed and it was called the trial cadre and
9 I was chief of the trial cadre and I reported
10 to a, I think a deputy DA or an executive
11 assistant DA by the name of James Kohler.

12 Anything else?

13 Q. In March of 1995 would you have
14 been reporting to Mr. Kohler?

15 A. March of '95 I wasn't in that
16 bureau any longer.

17 Q. Where were you then?

18 A. In January of '95 I took over the
19 trial division and I was chief of trials.

20 Q. As of that time when you took over
21 the trial division, was the homicide bureau or
22 the trial cadre under your supervision?

23 MR. LARKIN: Objection to form.

24 You can answer.

25 A. I'm sorry, can you repeat the

1 M. F. VECCHIONE

2 question.

3 Q. In January of '95 when you took
4 over the trial division, what was the homicide
5 bureau called: was it called the homicide
6 bureau or the trial cadre?

7 A. It was again called the homicide
8 bureau and it was under the supervision, if
9 that's what your question is --

10 Q. Yes.

11 A. Under the supervision of Barry
12 Schreiber and under the bureau chief
13 supervision of someone named Ken Taub.

14 Q. And did Mr. Taub report to you?

15 A. No.

16 Q. Who did he report to?

17 A. Excuse me?

18 Q. Who did he report to?

19 A. You have to ask Mr. Taub. I don't
20 know.

21 Q. Who did you report to?

22 A. When I was chief of trials? I
23 reported to the chief assistant and to the
24 District Attorney.

25 Q. Who was the chief assistant at

1 M. F. VECCHIONE

2 that time?

3 A. I don't recall, quite frankly. I
4 don't remember when certain people left. I
5 don't really remember to tell you the truth.

6 Q. After you became head of the trial
7 division, how often did you have contact with
8 Mr. Hynes?

9 MR. LARKIN: Objection to form.
10 Did he talk to him daily, e-mails? I'm
11 not sure what you are asking. Just note
12 an objection to the form.

13 You can answer the question.

14 A. Okay. You want to repeat it,
15 please.

16 Q. After you took over as head of the
17 trial division, how often did you have
18 communications with Mr. Hynes?

19 MR. LARKIN: Objection.

20 Q. On a daily basis, a weekly basis
21 or some other basis?

22 MR. LARKIN: Objection. For that
23 year, '95?

24 MR. RUDIN: Yes.

25 A. Neither.

1 M. F. VECCHIONE

2 MR. LARKIN: Just note an
3 objection to the form. I'm sorry.

4 A. Neither of those two. Not daily
5 and not weekly. It was occasionally and
6 whenever necessary.

7 Q. What position do you hold now?

8 A. Chief of the rackets division.

9 Q. What are your responsibilities as
10 chief of the rackets division?

11 A. I supervise people and cases that
12 are handled by the rackets division.

13 Q. Which bureaus or divisions are
14 under the rackets division?

15 A. Among them are the mortgage fraud
16 unit, the human trafficking bureau, organized
17 crime unit, major frauds and arson, the money
18 laundering and revenue crimes bureau, the
19 police integrity and civil rights bureau, the
20 environmental crimes unit, elder fraud unit.

21 I think I have them all. There
22 may be one or two others, but that's the best
23 I can remember at this point.

24 Q. How many ADAs are assigned to the
25 rackets division?

1 M. F. VECCHIONE

2 A. I would say approximately,
3 somewhere between 40 and 50.

4 Q. Who do you report to?

5 A. I report to the District Attorney.

6 Q. How frequent is your contact with
7 Mr. Hynes as of now?

8 MR. LARKIN: Objection to form.

9 A. It varies. Sometimes I talk to
10 him daily for a couple of days and sometimes I
11 won't talk to him for a week. It depends on
12 what is going on or if he has any questions
13 for me, if I need to speak to him. It is
14 really not anything that is definitive. It's
15 as needed.

16 Q. When were you appointed chief of
17 rackets?

18 A. I took over April 1, 2001.

19 Q. At any point since you have been
20 the head of the rackets division, have you
21 been given any additional responsibilities by
22 Mr. Hynes?

23 MR. LARKIN: Objection to the
24 form.

25 A. I'm not sure I understand the

1 M. F. VECCHIONE

2 question.

3 Q. Well, at any point since you have
4 been head, chief of the rackets division were
5 any additional areas of prosecution assigned
6 to you?

7 A. Oh, sure. Not all of the things I
8 just mentioned, all of the units and bureaus
9 were in existence when I took over. For
10 instance, the environmental crimes unit was
11 started while I was there. The mortgage fraud
12 unit was started while I was there. The human
13 trafficking bureau was started after I took
14 over and while I was there.

15 Q. When was the human trafficking
16 bureau started?

17 A. I would say three years ago.
18 That's an approximation.

19 Q. And who was the one who gave you
20 responsibility for that bureau?

21 A. The District Attorney.

22 MR. RUDIN: Can we have this
23 marked, please.

24 (Plaintiff's Exhibit 147,
25 6-page document, dated July 6, 1993

1 M. F. VECCHIONE
2 on first page, Re: People v. Cisero
3 Murphy marked for identification,
4 as of this date.)

5 Q. Mr. Vecchione, I show you what's
6 been marked as Plaintiff's 147, and my
7 question is whether or not you recognize the
8 signatures on each of those pages?

9 A. I do.

10 Q. And do you recognize those
11 signatures as your signature?

12 A. I do.

13 Q. I show you what's been previously
14 marked as Plaintiff's 79, and I direct your
15 attention to the last page of that exhibit.

16 A. Okay.

17 Q. And do you see where the name is
18 typed Michael F. Vecchione?

19 A. I do.

20 Q. And do you see that there is a
21 handwritten Michael Vecchione written above
22 it?

23 A. Yes.

24 Q. Is that your signature?

25 A. It is not.

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2 Q. Do you know whose signature it is?

3 A. I have no idea.

4 Q. Do you see that this signature was
5 notarized by Margarita Colon?

6 A. I see a notary stamp, yes.

7 Q. Do you see it says "sworn to
8 before me this 24th day of February 1995"?

9 A. That's what it says.

10 Q. Do you know who Margarita Colon
11 is?

12 A. I believe that she was a paralegal
13 at the homicide bureau.

14 Q. Were you present when someone
15 signed Michael Vecchione on this exhibit?

16 A. No, I was not.

17 Q. Were you present when this
18 signature was notarized?

19 A. No, I was not.

20 Q. Do you have any idea as you sit
21 here today, whose signature was notarized?

22 MR. LARKIN: Objection to the
23 form.

24 MR. RUDIN: Withdrawn.

25 Q. Do you have any idea as you sit

1 M. F. VECCHIONE

2 here today, whose signature Margarita Colon
3 was purporting to notarize?

4 A. You mean whose --

5 MR. LARKIN: Object to the form.
6 Sorry.

7 A. I'm not sure I understand. You
8 mean who wrote that signature?

9 Q. Yes.

10 A. I have no idea.

11 Q. Do you have any idea whether or
12 not anyone swore to this document under oath?

13 MR. LARKIN: Objection to the
14 form.

15 MS. POLSTEIN: Objection.

16 A. No.

17 Q. Well, did you swear to this
18 document under oath?

19 A. No.

20 Q. Do you know where you were when
21 this document was signed?

22 A. No.

23 Q. Have you ever seen this document
24 before?

25 A. During the prep for this

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2 deposition, yes, I have seen it. I saw it.

3 Q. Is that the first time you ever
4 saw it?

5 A. I can't recall.

6 Q. Well, do you see that there is, on
7 the first page of the document there is a
8 letter dated February 27th, 1995 from Charles
9 Posner addressed to you?

10 A. Yes, I see that.

11 Q. Who was Mr. Posner?

12 A. Mr. Posner was a deputy district
13 attorney who worked in the District Attorney's
14 office during the period of time that I worked
15 there.

16 Q. And was he assigned to the Jabbar
17 Collins prosecution?

18 A. He was.

19 Q. Were you?

20 A. I was.

21 Q. Did you ever see this letter
22 before?

23 A. During prep.

24 Q. Prior to prep?

25 A. No.

1 M. F. VECCHIONE

2 Oh, actually, let me take that
3 back. I can't recall if I did. I don't
4 recall seeing this before.

5 Q. Do you see attached to the letter
6 there is something called a Certificate?

7 A. A certificate, yes.

8 Q. And what is your understanding of
9 what this certificate purports to be?

10 MR. LARKIN: Objection to the
11 form.

12 MS. POLSTEIN: Objection.

13 MR. RUDIN: Well, withdrawn.

14 Q. What is your understanding of what
15 this certificate is?

16 A. Just give me a moment.

17 Okay. Well, paragraph 6 on the
18 second page indicates what it is.

19 Q. And what is it?

20 A. Well, I will read it.

21 "This certificate is made for the
22 presentation to a judge of a court of record
23 of the Commonwealth of Puerto Rico where
24 Adrian Diaz is currently residing, to attend
25 and testify in the above-mentioned trial for

1 M. F. VECCHIONE

2 the period of time required for his
3 testimony."

4 Q. Did you understand that anyone in
5 your office was going to be applying for this
6 certificate to be issued?

7 MR. LARKIN: Objection to the
8 form.

9 MR. RUDIN: Well, withdrawn.

10 Q. Do you see the date on that
11 certificate, the date it was entered?

12 A. Yes.

13 Q. February 27th, 1995?

14 A. Yes.

15 Q. On or about February 27th, 1995,
16 did you ask anyone at your office, at the
17 Brooklyn District Attorney's office, to apply
18 for this certificate?

19 A. On that date?

20 Q. On that date or before that date.

21 A. The role of Charles Posner was to
22 apply for this certificate, yes.

23 Q. Well, were you aware that he was
24 applying for it?

25 A. I was aware that he was supposed

1 M. F. VECCHIONE

2 to apply for it.

3 Q. Well, were you aware that he did
4 apply for it?

5 A. I now see that he did.

6 Q. Were you aware in February of 1995
7 that he applied for it?

8 A. Honestly, I don't recall that.

9 Q. Were you aware in February of 1995
10 that it was issued?

11 A. Don't recall.

12 Q. Did you go to Puerto Rico in
13 connection with the Jabbar Collins case?

14 A. I did.

15 Q. While you were in Puerto Rico did
16 you see this certificate?

17 A. No.

18 Q. Did you go to Puerto Rico with
19 anyone else from your office?

20 A. I did.

21 Q. Who else?

22 A. Detective Investigators Bondor,
23 Maher and Assistant District Attorney
24 Frascogna.

25 Q. While you were in Puerto Rico were

1 M. F. VECCHIONE

2 you aware whether any of those individuals had
3 received this certificate?

4 MR. LARKIN: Objection to the
5 form.

6 A. I was not aware of that.

7 Q. Were you aware whether any of them
8 had it in their possession while you were in
9 Puerto Rico?

10 MR. LARKIN: Objection to the
11 form.

12 A. Not aware of that.

13 Q. The first time you became aware of
14 this certificate was when?

15 A. Don't recall.

16 Q. Did you ask anyone to sign your
17 name in connection with an application for
18 this certificate?

19 A. No.

20 Q. Would you turn to the affidavit on
21 application, the one that has your name at the
22 bottom?

23 A. Yes.

24 MR. LARKIN: For the record you
25 are looking at Bates 448 and 449, the

1 M. F. VECCHIONE

2 last two pages of the exhibit?

3 Q. Is that correct? That's what I'm
4 asking you to look at.

5 A. Oh, yes, I'm looking at it.

6 Q. Would you look at 449, please.

7 A. Yes. Okay.

8 Q. Do you see that there is a
9 statement: "It is believed that Adrian Diaz
10 has been threatened in New York State which
11 causes relocation to Puerto Rico. There is
12 reason to believe that because of these
13 threats Adrian Diaz will not voluntarily
14 submit to service of process and return to New
15 York to testify in the above-mentioned case"?

16 A. Yes.

17 Q. Did you ask anyone to put that
18 statement in this document?

19 MR. LARKIN: Form objection.

20 A. Specifically this statement?

21 Q. Yes.

22 A. I don't recall.

23 Q. Did you ask anyone to place in any
24 document to be submitted to a court, the
25 substance of what's written in that statement?

1 M. F. VECCHIONE

2 MR. LARKIN: Objection.

3 A. I don't recall.

4 Q. Were you aware on or before
5 February 27th, 1995 of any threat that had
6 been made to Adrian Diaz?

7 A. We were aware of -- I was aware of
8 what was told to detective investigators.

9 Q. What was told to detective
10 investigators?

11 A. Members of Mr. Diaz's family told
12 detective investigators that he had been
13 threatened.

14 Q. Which members of his family?

15 A. I don't know. I wasn't there.

16 Q. Did anyone take any notes that you
17 are aware of about that information?

18 A. I'm not aware of any notes.

19 Q. Have you ever seen any notes
20 containing that information?

21 A. Don't recall.

22 Q. Did any detective investigator
23 from your office ever prepare any type of
24 report containing that information?

25 A. If he did, I don't recall.

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1 M. F. VECCHIONE

2 Q. Which detective investigators
3 received that information?

4 A. Well, the two that went out to
5 look for him which would be Bondor and Maher.

6 Q. And your testimony is at some
7 point they told you that this information had
8 been imparted to them by a member of Mr.
9 Diaz's family?

10 A. Well, you said a member.

11 MR. LARKIN: Form objection.

12 A. Well, you said a member. I don't
13 know if it was members or a member. I know
14 that it was imparted to them.

15 Q. When, if at all, did they tell you
16 that such information had been imparted to
17 them?

18 MR. LARKIN: Objection to the
19 form.

20 A. I don't recall.

21 Q. Do you recall that in or about
22 2006 that Mr. Collins filed a motion to vacate
23 his conviction, a 440 motion?

24 A. Do I recall that?

25 Q. Yes.

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2 A. Yes.

3 Q. And do you recall that your office
4 prepared a response to that motion?

5 A. I would assume so, yes.

6 Q. Well, are you aware that it did?

7 A. Yes.

8 Q. And in connection with the
9 preparation of a response to that motion, did
10 you review any materials in the Jabbar Collins
11 file?

12 MS. POLSTEIN: Objection.

13 MR. LARKIN: Objection to the
14 form.

15 MR. RUDIN: Withdrawn.

16 Q. After you learned that the 440
17 motion had been filed --

18 A. Yes.

19 Q. -- did you personally review any
20 of the contents of your office's file or files
21 relating to the Jabbar Collins prosecution?

22 A. Yes.

23 MS. POLSTEIN: Objection as to
24 form.

25 Q. And in connection with that review

1 M. F. VECCHIONE

2 did you see this document, that is,
3 Plaintiff's 79?

4 A. Can't recall.

5 Are we done with this?

6 MR. RUDIN: Yes.

7 MS. POLSTEIN: You are talking
8 about the second 440?

9 MR. RUDIN: Yes, the one that was
10 filed in 2006.

11 Q. Did you understand that that's
12 what I was asking?

13 A. Excuse me?

14 Q. Did you understand that my
15 question had to do with the 440 motion that
16 was filed in 2006?

17 A. I did.

18 Q. Mr. Vecchione, would you please
19 take a look at what's been previously marked
20 as Plaintiff's Exhibit 94.

21 A. Okay.

22 Q. Would you please look at the last
23 page of that document. It is Bates stamped
24 34086.

25 A. Okay.

1 M. F. VECCHIONE

2 Q. And do you see that there is a
3 signature line over the typed words assistant
4 district attorney?

5 A. I see that.

6 Q. And do you see that the words
7 Michael Vecchione appear?

8 A. I see that.

9 Q. Is that your signature?

10 A. It is not.

11 Q. Did you sign that document?

12 A. I did not.

13 Q. Do you know who signed it?

14 A. Don't have any idea.

15 Q. Do you recognize the nature of the
16 order that appears on the first page and
17 continues to the second page?

18 MR. LARKIN: Objection. The
19 document speaks for itself, but go
20 ahead, you can answer.

21 A. I'm sorry, what's the question?

22 Q. What is your understanding of what
23 this order is called?

24 A. This colloquially was called a
25 Damiani order.

1 M. F. VECCHIONE

2 Q. What is the purpose of a Damiani
3 order?

4 A. To -- if someone, if an inmate or
5 someone who is incarcerated consents, to bring
6 them out or to take them out of whatever
7 correctional facility they are in, to bring
8 them into the District Attorney's office.

9 Q. For what purpose?

10 A. Many purposes. To talk to them.
11 Maybe a line-up. Many things.

12 Q. And is it your understanding that
13 in order to obtain this order you would first
14 have to have the consent of the witness,
15 prospective witness?

16 A. In order to do what?

17 Q. To obtain the order?

18 MR. LARKIN: Objection to form.

19 A. To obtain the order? No, that's
20 not -- no.

21 Q. Well, would you be able to obtain
22 the order if you did not understand that the
23 witness wished to speak with you?

24 MR. LARKIN: Objection to the
25 form.

1 M. F. VECCHIONE

2 MS. POLSTEIN: Objection.

3 MR. RUDIN: I will withdraw that.

4 Q. Do you see the date of the
5 affirmation that contains your name?

6 A. Yes.

7 Q. January 26, 1995?

8 A. Yes.

9 Q. Were you aware on or about January
10 26, 1995 that this affirmation containing your
11 name was going to be submitted to a judge?

12 A. I don't recall.

13 Q. Did you ask anyone to prepare any
14 of these documents contained in Plaintiff's
15 94?

16 A. Don't recall.

17 Q. Did you ever learn that the
18 documents contained in Plaintiff's 94 had been
19 submitted to a court?

20 A. When?

21 Q. Ever.

22 A. Well, you are showing it to me
23 right now.

24 Q. Right. Were you aware of it in
25 1995 that an order had been obtained?

1 M. F. VECCHIONE

2 A. I don't recall.

3 Q. You don't recall?

4 A. No, I don't.

5 Q. When was the first time, if at
6 all, that you learned that someone had written
7 your name on this affirmation?

8 A. I can't recall that.

9 Q. Well, did you learn it before or
10 during the trial of Mr. Collins?

11 A. Don't recall.

12 Q. Did you learn it at any point
13 after the trial of Mr. Collins?

14 A. Don't recall.

15 Q. Did you learn it in 2006 after Mr.
16 Collins filed his motion to vacate his
17 conviction?

18 A. I don't recall.

19 Q. Did you review this document when
20 you prepared for this deposition?

21 A. Yes.

22 Q. Before you reviewed the document
23 to prepare for this deposition, did you ever
24 see the document before?

25 A. Don't recall.

1 M. F. VECCHIONE

2 Q. Have you ever made any
3 investigation into who signed your name on
4 this document?

5 MR. LARKIN: Objection to the
6 form.

7 MS. POLSTEIN: Objection.

8 Q. You can answer.

9 A. Can I answer?

10 Q. Please answer.

11 A. Okay.

12 No.

13 Q. Have you ever tried to find out
14 who signed your name onto this document?

15 A. I learned of it when I was --
16 during prep.

17 Q. That was the first time?

18 A. That's the first time I can recall
19 seeing it, yes.

20 Q. Did you ask anyone to obtain a
21 Damiani order in connection with the witness
22 Edwin Oliva?

23 A. I don't recall.

24 Q. Okay. Just hand it back, please.

25 A. Do you want this one back, too?

1 M. F. VECCHIONE

2 MR. RUDIN: Sure.

3 Q. I show you what's been previously
4 marked as Plaintiff's 91.

5 A. Okay.

6 Q. I'd ask you to turn to the last
7 page in that document which is Bates stamped
8 2109.

9 A. Yes.

10 Q. Do you see that the name Michael
11 Vecchione is typed in?

12 A. Yes.

13 Q. And do you see that someone
14 handwrote the name Michael Vecchione above
15 that?

16 A. Yes.

17 Q. Is that your signature?

18 A. It is not.

19 Q. Do you know who signed your name
20 or wrote that name?

21 A. No.

22 Q. Do you see that underneath there
23 it is written in "sworn to before me this 23rd
24 day of February 1995"?

25 A. Yes.

1 M. F. VECCHIONE

2 Q. Do you see that?

3 And do you recognize the signature
4 of the notary underneath that writing?

5 A. No.

6 Q. Do you know an individual named
7 Lori or Lou Katz?

8 A. No.

9 Q. Did you ask anyone to sign your
10 name to this affirmation?

11 A. No.

12 Q. Did you ever swear to the truth of
13 this affirmation?

14 A. And sign it?

15 Q. Yes.

16 A. No.

17 Q. Did you ever swear to the truth of
18 it?

19 A. Well, how could I --

20 MR. LARKIN: Objection to the
21 form.

22 Sorry. Go ahead.

23 Q. You can answer.

24 A. No.

25 Q. I'm sorry?

1 M. F. VECCHIONE

2 A. No.

3 Q. Were you aware in or about
4 February of 1995 that this affirmation was
5 being submitted to the court?

6 A. As I sit here today, I can't
7 recall.

8 Q. Well, do you see the document on
9 the top of this exhibit?

10 A. Yes.

11 Q. Material witness order?

12 A. Yes.

13 Q. Do you know what a material
14 witness order is?

15 A. Yes.

16 Q. What's a material witness order?

17 A. It is an order by a court
18 declaring an individual a material witness.

19 Q. What is a material witness?

20 A. Someone who is necessary for the
21 case that is presently pending.

22 Q. And where is a material witness
23 supposed to be brought after he is --
24 withdrawn.

25 What does your office do with a

1 M. F. VECCHIONE

2 material witness order after it is obtained?

3 MR. LARKIN: Objection to the
4 form.

5 MS. POLSTEIN: Objection.

6 Q. You can answer.

7 A. What does my office do?

8 Q. Yes.

9 A. You have to ask my office.

10 Q. Well, did you ever obtain a
11 material witness order before in any case?

12 MR. LARKIN: Objection to the
13 form.

14 A. Before what?

15 MR. LARKIN: Before the Collins
16 case?

17 MR. RUDIN: Yes.

18 A. I have no recollection of that.

19 Q. Have you ever obtained a material
20 witness order in your career?

21 A. The Angel Santos material witness
22 order.

23 Q. That's the only one that you ever
24 obtained?

25 A. That I can recall, absolutely.

1 M. F. VECCHIONE

2 Q. Did you authorize anyone in your
3 office to apply to the court to obtain a
4 material witness order regarding Angel Santos?

5 A. I can't recall.

6 MR. LARKIN: Objection to the
7 form.

8 I'm sorry.

9 Q. I'm sorry?

10 A. I don't recall.

11 Q. Were you present when the order
12 was signed?

13 A. Yes.

14 Q. Do you have a recollection of
15 that?

16 A. I have a recollection -- well, my
17 signature -- Judge Egitto -- this was done in
18 Judge Egitto's chambers.

19 Q. And do you have a recollection of
20 being present when he signed the order?

21 A. I have a recollection of being in
22 the chambers. The physical point that he
23 signed it, I don't have any recollection of
24 when that was, if it was while we were
25 standing in front of him or while we were

1 M. F. VECCHIONE

2 outside in his anteroom, I just don't know. I
3 don't remember.

4 Q. Do you have any recollection of
5 anything that occurred in front of Judge
6 Egitto in connection with the application for
7 or the signing of this material witness order
8 form?

9 MR. LARKIN: Objection to the
10 form.

11 MS. POLSTEIN: Objection.

12 THE WITNESS: Answer?

13 MR. LARKIN: You can answer.

14 A. Yes.

15 Q. What is your recollection?

16 A. My recollection is that Angel
17 Santos was brought in front of Judge Egitto in
18 his chambers and a material witness proceeding
19 was held by Judge Egitto in his chambers.

20 Q. Was this order that is signed by
21 Judge Egitto, was that order signed during the
22 same proceeding that you just referred to?

23 A. I'm not sure I understand the
24 question. During or once it was concluded, I
25 have no idea what you want me to answer.

1 M. F. VECCHIONE

2 Q. This material witness order that
3 contains Justice Egitto's signature on --

4 A. Yes.

5 Q. Do you see it?

6 A. Yes.

7 Q. Was Angel Santos present when
8 Justice Egitto signed this document?

9 A. As I said before, I don't know if
10 Judge Egitto signed it while we were present,
11 when we were sitting in front of him or he
12 asked us to step out and he signed it. I
13 don't remember.

14 Q. And does this document contain
15 your signature?

16 A. Well, I see it there, yes.

17 Q. That's page 2, that's Bates
18 stamped 2106?

19 A. I do see it there.

20 MR. LARKIN: Just objection to the
21 form. I mean, 2106 page 2, okay.
22 That's what you are asking about now?

23 MR. RUDIN: Yes.

24 MR. LARKIN: All right.

25 Q. Were you aware at the time that

1 M. F. VECCHIONE

2 this order was signed, that Justice Egitto had
3 before him an affirmation containing your
4 name?

5 MR. LARKIN: Objection to the
6 form. It appears from this exhibit,
7 Joel, that there are two orders. There
8 is a material witness order which is the
9 first two pages, and then the third page
10 looks like a warrant.

11 Your questions refer to an order.
12 Are you referring to both orders? Do
13 you want to break it down?

14 MR. RUDIN: I will withdraw the
15 question.

16 Q. At the time that Justice Egitto
17 signed the material witness order that makes
18 up the first two pages of this exhibit --

19 A. Um-hum.

20 Q. -- were you aware of whether or
21 not an affirmation that contained your name
22 had been submitted to Justice Egitto?

23 A. I don't recall.

24 Q. Were you aware at the time that
25 Justice Egitto signed the material witness

1 M. F. VECCHIONE

2 order, or the warrant which is the third page
3 of this exhibit, of whether or not he was
4 relying on an affirmation that contained your
5 name?

6 MR. LARKIN: Objection to form.

7 A. You have to ask Judge Egitto.

8 Q. Well, I'm asking you.

9 MR. LARKIN: Objection.

10 A. What's the question?

11 MR. LARKIN: Objection.

12 Q. Were you aware at the time that
13 Justice Egitto signed either the order or the
14 warrant, whether or not -- let me withdraw
15 that.

16 Did you believe at the time that
17 Justice Egitto signed either the order or the
18 warrant, that he was relying on an affirmation
19 that had been submitted to him that appeared
20 to have been signed by Michael Vecchione?

21 MS. POLSTEIN: Objection.

22 MR. LARKIN: Objection.

23 Q. You can answer.

24 A. I don't recall.

25 Q. When was the first time prior to

1 M. F. VECCHIONE

2 today, if at all, that you became aware that
3 someone had signed your name on to the
4 affirmation that's contained in Plaintiff's
5 Exhibit 91.

6 A. Perhaps during prep. I don't
7 recall if it was before that, but it was
8 certainly during prep I saw it.

9 Q. Did you see it following the
10 filing of Mr. Collins' 440 motion in 2006?

11 A. Don't recall.

12 Q. Did you see it at any time before
13 the verdict of Mr. Collins' trial?

14 MR. LARKIN: Objection to the
15 form.

16 A. Don't recall.

17 Q. Did you ever swear to the
18 truthfulness of the information contained in
19 the affirmation that has your name at the
20 bottom of it --

21 MR. LARKIN: Objection.

22 Q. -- that's contained in Exhibit 91?

23 MR. LARKIN: Objection.

24 A. You already asked me that
25 question.

1 M. F. VECCHIONE

2 Q. Well, I'm asking you again, if I
3 asked before.

4 MR. LARKIN: Objection. Asked and
5 answered.

6 A. Well, the same answer as the last
7 time. Same answer.

8 Q. Please answer.

9 A. The same one as I gave the last
10 time.

11 Q. Which is what?

12 MR. LARKIN: Objection. Stop.

13 MR. RUDIN: I don't recall asking
14 that question with regard to this
15 document. If I did, I can get an
16 answer.

17 MR. LARKIN: All right. Let's
18 just be fair.

19 If the witness has already
20 answered a question, I would appreciate
21 it if we don't beat ourselves. All
22 right. I think that is only fair to the
23 witness. The question has been asked
24 and answered.

25 (Discussion off the record.)

1 M. F. VECCHIONE

2 MR. RUDIN: Okay, I'm informed
3 that I did ask the question, so I
4 withdraw it.

5 MS. LICHSTEIN: Senior moment.

6 MR. RUDIN: Can I have that back,
7 please.

8 THE WITNESS: Sure.

9 Q. Mr. Vecchione, would you please
10 look at what's previously marked as
11 Plaintiff's 113.

12 A. Sure.

13 Q. Do you see the signature on the
14 second page of that document?

15 A. I do.

16 Q. Is that your signature?

17 A. It is not.

18 Q. Do you know who signed it?

19 A. I have no idea.

20 Q. Did you ask anyone to sign this
21 for you?

22 A. Ask someone to sign my name to
23 this?

24 Q. Yes.

25 A. No.

1 M. F. VECCHIONE

2 Q. Were you ever aware that anyone
3 signed your name to this?

4 A. I saw this during prep.

5 Q. That's the first time you became
6 aware of it?

7 A. Yes. You know, it might have been
8 attached to some of the other papers, but my
9 recollection as I sit here today is that I
10 remember seeing it during prep.

11 Q. Let me show you what's been
12 previously marked as Plaintiff's 112.

13 A. Okay.

14 You know, it is really difficult
15 to see in this light. Okay.

16 Q. This is an order to produce a
17 witness.

18 A. That's what it says, yes.

19 Q. And someone signed the name Mike
20 Vecchione at the bottom?

21 A. I see that.

22 Q. Is that your signature?

23 A. No.

24 Q. Do you know who signed it?

25 A. No.

1 M. F. VECCHIONE

2 Q. Did you ask anyone to sign your
3 name on this document?

4 A. No.

5 Q. Let me show you Plaintiff's 114.
6 This is an order to produce a witness. Is
7 that correct?

8 A. It says order to produce, yes.

9 THE WITNESS: Oh, thank you.
10 That's much better.

11 A. Yes, go ahead.

12 Q. And this is in the form of an
13 affirmation?

14 MR. LARKIN: Objection to the
15 form.

16 Q. Well, do you see that at the
17 second part of the document contains the
18 statement "State of New York, County of Kings,
19 Michael Vecchione, an attorney at law, duly
20 licensed to practice in the courts of the
21 State of New York, affirms under penalty of
22 perjury"?

23 A. I see that, yes.

24 Q. And then there are a series of
25 statements?

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2 A. Yes.

3 Q. And then someone wrote the name
4 Michael Vecchione?

5 A. Correct.

6 Q. Is that your signature?

7 A. It is not.

8 Q. Do you know who wrote it?

9 A. Do not.

10 Q. Did you ever see that document
11 before?

12 A. I believe this was attached to
13 some documents that I saw, and I saw it during
14 prep.

15 Q. At the time that you were handling
16 the case of The People against Saponaro and
17 Stasio, did you ask anyone to sign your name
18 to this document?

19 A. No.

20 MR. LARKIN: Objection.

21 Q. Were you aware that anyone signed
22 your name to this document at that time?

23 A. No.

24 Q. Let me show you Plaintiff's 115.

25 Q. This is an order to produce,

1 M. F. VECCHIONE

2 correct?

3 A. It is, that's what it says.

4 Q. And who wrote the name Michael
5 Vecchione at the bottom?

6 A. No idea.

7 Q. Plaintiff's 116, an order to
8 produce.

9 A. Okay.

10 Q. Do you know who wrote the name
11 Michael Vecchione at the bottom?

12 A. No idea.

13 Q. Plaintiff's 117 is an affirmation,
14 correct?

15 MR. LARKIN: Just objection. Give
16 him a moment to look at the document.

17 A. Okay.

18 Q. Someone wrote the name Michael
19 Vecchione at the bottom of that document?

20 A. Correct.

21 Q. Did you write it?

22 A. No.

23 Q. Is this document in the form of a
24 sworn affirmation?

25 MR. LARKIN: Objection to the

1 M. F. VECCHIONE

2 form.

3 A. I'm just going to read what it
4 says. "I," and then the name, and then
5 ultimately it says "affirms under penalties of
6 perjury that...."

7 Q. All right, you don't have to read
8 the rest.

9 Did you ask anyone to sign your
10 name to this document?

11 A. No.

12 Q. Were you aware that anyone had
13 signed your name to this document?

14 A. No.

15 MR. LARKIN: Objection.

16 Q. Plaintiff's 118. Directing your
17 attention to page 2. Is that your signature?

18 A. It is not.

19 Q. Directing your attention to
20 Plaintiff's 119. On page 2 is that your
21 signature?

22 A. It is not.

23 Q. Directing your attention to
24 Plaintiff's 120. The second page, is that
25 your signature?

1 M. F. VECCHIONE

2 A. It is not.

3 Q. By the way, do you know an
4 individual named Sheila Hoke?

5 MR. LARKIN: Objection.

6 A. Honestly, no, I don't.

7 Q. Do you see that that document
8 contains a notary stamp at the bottom?

9 A. Do.

10 Q. In the name Sheila Hoke?

11 A. I do.

12 Q. And it says "sworn to before me
13 this 21st day of October, 1994."

14 A. It does.

15 Q. And then it is signed by Sheila D.
16 Hoke?

17 A. It does.

18 Q. Were you present when that
19 document was signed by Sheila Hoke?

20 A. It's not my signature.

21 Q. When was the first time that you
22 became aware of this document?

23 MR. LARKIN: Objection to the
24 form. Referring now specifically to
25 Plaintiff's 120 I assume?

1 M. F. VECCHIONE

2 MR. RUDIN: Yes.

3 A. I don't recall.

4 Q. Did you see that it was attached
5 to Mr. Collins' federal court complaint?

6 A. Well, I saw that there were lots
7 of these were attached. I don't have a
8 distinct recollection of this particular one.

9 Q. Did you make any investigation
10 when you saw documents attached to Mr.
11 Collins' civil court complaint that --
12 withdrawn.

13 When you looked at the documents
14 attached to Mr. Collins' civil court
15 complaint, did you see any documents that
16 contained the signature Michael Vecchione when
17 you had not in fact signed the document?

18 MR. LARKIN: Objection to form.

19 A. You have to repeat the question.
20 I don't really understand it.

21 Q. Did you see any documents attached
22 to Mr. Collins' civil court complaint that
23 contained a signature of Michael Vecchione,
24 when, in fact, it was not your signature?

25 MR. LARKIN: Objection to form.

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2 A. I saw documents attached, but I
3 don't recall exactly what part of the
4 documents I looked at. I don't have a
5 recollection of that.

6 Q. Well, did you read Mr. Collins'
7 civil court complaint, federal court
8 complaint?

9 A. Federal court complaint?

10 Q. Yes.

11 MR. LARKIN: Objection.

12 Q. The civil complaint in the civil
13 action?

14 MR. LARKIN: Objection. Just
15 objection. This lawsuit, right?

16 MR. RUDIN: Yes.

17 A. This lawsuit?

18 Q. Yes.

19 A. No.

20 Q. You never read the complaint?

21 A. No.

22 Q. Did you ever look at it?

23 A. I can't recall I ever did.

24 Q. Well, did you ever learn before
25 you began to prepare for your deposition

1 M. F. VECCHIONE
2 testimony today, that the lawsuit contained an
3 allegation that there were documents submitted
4 to courts containing a signature of Michael
5 Vecchione that in fact had not been signed by
6 you?

7 A. My lawyer --

8 MR. LARKIN: Objection to the
9 form.

10 I'm sorry. Go ahead.

11 A. The question is before I began
12 prep?

13 Q. Yes.

14 A. No.

15 MR. RUDIN: May we have this
16 document marked, please.

17 (Plaintiff's Exhibit 148,
18 Answer in Omnibus Motion in The
19 People of the State of New York v.
20 Shlomo Helbrans, Malka Helbrans,
21 Mordechai Weisz marked for
22 identification, as of this date.)

23 Q. Mr. Vecchione, I would ask you to
24 look at Plaintiff's 148 which is a seven-page
25 document that states at the top Answer to

1 M. F. VECCHIONE

2 Omnibus Motion on behalf of Malka Helbrans,
3 and tell us whether or not the signature at
4 the bottom of page 7 is your signature.

5 MR. LARKIN: Objection. This
6 document was, to my knowledge, never
7 produced in this case and it involves a
8 different case that is different from
9 the Jabbar Collins case. I realize it
10 appears to relate to some of the matters
11 that we have been discussing, but I'm
12 going to object to using it in this
13 deposition.

14 I mean, there is a limitation
15 imposed by the magistrate on what the
16 subject matter of today's testimony is
17 supposed to be. I realize it does
18 include practices, but this document has
19 never been produced to us in this case
20 and it involves a different matter than
21 the Jabbar Collins criminal case.

22 MR. RUDIN: So you are instructing
23 your client not to answer that question
24 about whether or not that's his
25 signature. That's my only question.

1 M. F. VECCHIONE

2 MR. LARKIN: The omnibus -- well,
3 I'll let him answer that question. One
4 question.

5 A. Before I answer -- I will answer
6 the question. The answer is no.

7 Can you go back to the other
8 question you asked me about the --

9 Q. We will in a second. I just want
10 to have a clear record.

11 A. Okay, you asked me to -- that I
12 could --

13 Q. Regarding Plaintiff's 148, is that
14 your signature at the bottom of page 7?

15 A. Can I see it?

16 I think I did see it. That's not
17 my signature.

18 Q. What was the answer you wanted to
19 clarify?

20 A. The question you asked me was
21 about whether or not I knew of any allegations
22 in the complaint, or I had seen documents.

23 I'm not sure I understood the time
24 frame. Could you just repeat the question
25 again. I wasn't sure when you were asking

1 M. F. VECCHIONE

2 that.

3 MS. POLSTEIN: Objection.

4 Q. Before you began to prepare for
5 your deposition today, did you ever learn that
6 there was an allegation in Mr. Collins'
7 federal civil complaint that documents were
8 submitted to courts in the form of
9 affirmations or affidavits containing the
10 signature of Michael Vecchione that you in
11 fact did not sign?

12 A. Okay, I misunderstood.

13 I don't recall.

14 MR. RUDIN: May we have this
15 marked, please.

16 (Plaintiff's Exhibit 149,
17 document entitled Discovery/Rosario
18 in The People of the State of New
19 York v. Clarence Norman, Jr.
20 marked for identification, as of
21 this date.)

22 MR. RUDIN: This document, Mr.
23 Larkin, was attached to our complaint,
24 for your information.

25 MR. LARKIN: I'm sorry, Joel, what

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1 M. F. VECCHIONE

2 did you say?

3 MR. RUDIN: It was attached to our
4 complaint.

5 MR. LARKIN: People against
6 Clarence Norman?

7 MR. RUDIN: Yes.

8 MR. LARKIN: I don't have the
9 complaint in front of me, but I'll
10 accept that. This is marked now as
11 Plaintiff's 149.

12 MR. RUDIN: 149.

13 MR. LARKIN: Okay.

14 Q. Mr. Vecchione, would you look at
15 Plaintiff's 149 and tell us whether the
16 signature Michael F. Vecchione on page 2 is
17 your signature?

18 A. It doesn't appear to be my
19 signature.

20 Q. Who is Clarence Norman?

21 A. He is a former assemblyman and
22 former head of the democratic party in
23 Brooklyn.

24 Q. And did you handle this
25 prosecution?

1 M. F. VECCHIONE

2 A. I did. Prosecutions. There were
3 four.

4 Q. And was he charged with, among
5 other things, the filing of a false public
6 document?

7 A. I don't recall.

8 Q. You don't recall what he was
9 charged with?

10 MR. LARKIN: Well, objection.

11 That wasn't his answer.

12 Q. Well, do you recall what he was
13 charged with?

14 A. I recall some of the things he was
15 charged with in general, but I don't --

16 Q. Do you recall whether or not he
17 was ever charged with the crime of filing a
18 false public document?

19 A. I don't recall.

20 Q. Now, this document that I just
21 showed you, Plaintiff's 149, contains the
22 statement "Michael Vecchione, an attorney of
23 law and Assistant District Attorney in Kings
24 County affirms under penalties of perjury" and
25 then it contains a series of statements. Is

1 M. F. VECCHIONE

2 that correct?

3 A. It does. That's what it says on
4 here.

5 Q. Did you ask anyone to sign your
6 name to this document?

7 A. I did not.

8 Q. Did you know that anyone signed
9 your name to this document?

10 MR. LARKIN: Objection. When, at
11 the time?

12 MR. RUDIN: Yeah, at the time.

13 A. No.

14 Q. When did you first become aware
15 that someone had signed your name to this
16 document?

17 A. When you showed it to me just two
18 seconds ago.

19 Q. During 1995 were you aware whether
20 or not anyone employed by the Brooklyn
21 District Attorney's office had ever signed
22 your name to either an affirmation or an
23 affidavit that was submitted to a court?

24 A. I can't recall.

25 Q. Well, was there any kind of

1 M. F. VECCHIONE

2 practice that you are aware of in 1995 at the
3 DA's office for paralegals to sign the names
4 of attorneys to affirmations or affidavits?

5 A. I know --

6 MR. LARKIN: Objection to the
7 form.

8 I'm sorry.

9 A. I know of no such practice. I
10 knew of no such practice.

11 Q. Well, did you know of any such
12 practice in 1995?

13 A. I can't recall. It's 2013.

14 Q. Did you know of an individual
15 named Liza Noonan?

16 A. I know who she is, sure.

17 Q. Who is she?

18 A. He was paralegal in the Brooklyn
19 District Attorney's office.

20 Q. Was she in fact supervising
21 paralegal?

22 A. When?

23 Q. In 1995.

24 A. Don't know.

25 Q. Was she working for you in 1995?

1 M. F. VECCHIONE

2 MR. LARKIN: Objection to form.

3 MR. RUDIN: Well, withdrawn.

4 Q. Was she working under your
5 supervision in 1995?

6 A. No.

7 Q. Was she ever working under your
8 supervision?

9 MR. LARKIN: Well, objection to
10 the form. I think it is ambiguous.

11 You can answer. Sorry.

12 A. I believe for a short period of
13 time in 1994 when I was in homicide.

14 Q. Did she work under your
15 supervision in 1995?

16 MR. LARKIN: Form objection.

17 A. She did not work under my
18 supervision, no. She was in homicide. I was
19 chief of trials.

20 Q. Did she have any responsibility in
21 connection with the Jabbar Collins case?

22 A. I believe she was the paralegal.

23 Q. And who was handling the Jabbar
24 Collins case?

25 MR. LARKIN: Objection.

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2 A. I was. Charles Posner was, Stacey
3 Frascogna was.

4 Q. Did you ask her to perform any
5 function in connection with the Jabbar Collins
6 case?

7 A. I don't recall. I'm sure I did,
8 but I don't recall.

9 Q. During the Jabbar Collins case,
10 from the time that you became involved until
11 there was a verdict, were you aware of whether
12 or not Ms. Noonan ever signed your name to an
13 affirmation or an affidavit in connection with
14 the Collins case?

15 A. No.

16 Q. Were you aware at that time, that
17 is up until the time of the verdict in the
18 Collins case, that she had signed your name to
19 an affidavit or an affirmation in any case?

20 A. No.

21 Q. Were you aware at the time of the
22 verdict in the Jabbar Collins case, whether or
23 not anyone employed by the Brooklyn DA's
24 office had ever signed your name to an
25 affidavit or an affirmation?

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2 A. No.

3 Q. Prior to the filing of Jabbar
4 Collins' federal civil case, were you ever
5 aware that there was a practice at the
6 Brooklyn DA's office of para legals signing
7 prosecutors' names to affidavits or
8 affirmations?

9 MR. LARKIN: Objection to form.

10 THE WITNESS: What does that mean?

11 MR. LARKIN: You can answer. I'm
12 sorry.

13 A. Oh. I'm not aware of any
14 practice.

15 Q. Were you ever aware of such a
16 practice?

17 A. No.

18 Q. Did Ken Taub ever discuss such a
19 practice with you?

20 A. Not that I can recall.

21 Q. Did Ken Taub to your knowledge
22 ever direct that such a practice be
23 discontinued?

24 MR. LARKIN: Objection. You can
25 answer.

1 M. F. VECCHIONE

2 A. Not that I can recall. Not that I
3 even know of, I have no idea.

4 Q. After Mr. Collins' federal civil
5 lawsuit was filed, did anyone at an executive
6 level in the Brooklyn DA's office ever discuss
7 with you the allegations in the complaint
8 concerning the signing of your name to
9 affidavits and affirmations?

10 A. I --

11 MR. LARKIN: Objection.

12 Q. I'm sorry?

13 MR. LARKIN: You can answer.

14 A. Not that I can recall.

15 Q. Did Mr. Hynes ever discuss that
16 subject with you?

17 A. Not that can I recall.

18 Q. To this day has he ever discussed
19 that subject with you?

20 MR. LARKIN: Objection to form.

21 Go ahead.

22 A. To this day, you mean like as of
23 yesterday?

24 Q. Yes.

25 A. I don't recall his speaking to me

1 M. F. VECCHIONE

2 about that.

3 Q. Did Mr. Hynes ever ask you whether
4 or not it was true that affidavits or
5 affirmations were submitted to courts that
6 were signed on your behalf by other
7 individuals employed by the DA's office?

8 MR. LARKIN: Objection to the
9 form.

10 A. I don't recall a conversation like
11 that.

12 Q. Did Amy Feinstein ever discuss
13 with you whether it was true that affidavits
14 or affirmations that individuals had signed in
15 your name, were submitted to courts?

16 A. Don't recall any such
17 conversation.

18 Q. Are you familiar with the New York
19 State penal law?

20 MS. POLSTEIN: Objection as to
21 form.

22 MR. LARKIN: Objection to this.

23 A. I don't understand that question.

24 Q. Well, is it your responsibility to
25 prosecute violations of the New York State

1 M. F. VECCHIONE

2 Penal Law?

3 MR. LARKIN: Objection. Tell him.

4 A. Yes. Among my responsibilities,
5 yes.

6 Q. And are you familiar with the
7 provisions of the New York State Penal Law?

8 A. There are provisions I'm familiar
9 with, yes.

10 Q. Were you familiar with the
11 provisions of the New York State Penal Law in
12 1995?

13 MS. POLSTEIN: Objection.

14 MR. LARKIN: Objection.

15 A. Yes.

16 Q. And were you familiar in 1995 with
17 what the purpose is of a signature on an
18 affidavit by a notary public?

19 MR. LARKIN: Objection.

20 A. By the signature of the notary
21 public?

22 Q. Yes.

23 A. Yes.

24 MR. LARKIN: Objection.

25 Q. Did you have an understanding what

1 M. F. VECCHIONE

2 the oath requirement was in connection with
3 notary publics?

4 A. Yes.

5 Q. What was your understanding in
6 1995 of the oath requirement?

7 A. That if you were swearing to an
8 affidavit, you swore to it in front of a
9 notary public who saw you sign it and then the
10 notary public would notarize your signature.

11 Q. And did you have any understanding
12 in 1995 about whether or not it was a crime
13 for a notary public to notarize a signature
14 where the person who had signed was not
15 present?

16 A. I guess it could be a crime, yes.

17 Q. And did you understand in 1995
18 that it was a crime for a notary public to
19 notarize a signature where the person who
20 supposedly had -- withdrawn.

21 Have you ever conducted any
22 investigation of any individuals who signed
23 your name to affirmations or affidavits?

24 MR. LARKIN: Objection. You can
25 answer.

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2 THE WITNESS: Can, you said?

3 MS. KRASNOW: Yes.

4 MR. LARKIN: You can, yes.

5 A. No.

6 Q. Are you aware of whether or not
7 anyone at the Brooklyn DA's office has ever
8 investigated any of the affirmations or
9 affidavits that we reviewed today that were
10 signed in your name?

11 A. I'm not aware of any.

12 Q. Have you ever asked for such an
13 investigation?

14 A. No that I can recall, no.

15 MR. LARKIN: Do you mind if we
16 take just two minutes?

17 MR. RUDIN: Sure.

18 THE VIDEOGRAPHER: Going off the
19 record approximately 10:38 a.m.

20 (Recess taken.)

21 THE VIDEOGRAPHER: We are now
22 going back on the record approximately
23 10:48 a.m.

24 BY MR. RUDIN:

25 Q. Mr. Vecchione, I was asking you a

1 M. F. VECCHIONE

2 number of questions earlier about what a
3 material witness order is. Do you remember
4 that?

5 A. I do.

6 Q. Do you have any understanding of
7 whether or not a sworn affirmation or
8 affidavit setting forth the reasons why a
9 material witness order should be issued is
10 required by law?

11 MR. LARKIN: Objection. You can
12 answer.

13 A. Do I have now?

14 Q. Yes.

15 A. Yes, of course.

16 Q. And what's the answer?

17 A. Yes.

18 Q. And that's provided for in the
19 material witness statute?

20 A. I have no recollection.

21 MR. LARKIN: Objection to form.

22 MR. RUDIN: Well, why don't we
23 have this marked.

24 (Plaintiff's Exhibit 150,
25 three-page document containing

1 M. F. VECCHIONE

2 Article 620, Securing Attendance of
3 Witnesses by Material Witness Order
4 marked for identification, as of
5 this date.)

6 Q. Mr. Vecchione, I would like to
7 direct your attention to Section 620.30,
8 subdivision 1, which is on the second page of
9 that exhibit.

10 A. 630?

11 Q. 620.30.

12 A. Yes, okay.

13 Q. And I'm going to read into the
14 record what it says.

15 "A proceeding to adjudge a person,
16 a material witness, must be commenced by
17 application to the appropriate court made in
18 writing and subscribed and sworn to by the
19 applicant, demonstrating reasonable cause to
20 believe the existence of facts as specified in
21 subdivision 1 of Section 620.20 warranting the
22 adjudication of such person as a material
23 witness."

24 Did I read that correctly?

25 A. You did.

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2 Q. And was that the statute that was
3 in force in 1995?

4 MR. LARKIN: Well, objection. You
5 can answer.

6 A. It says at the bottom "effective
7 September 1, 1971," so I guess the answer is
8 yes, of course.

9 Q. Were you familiar with the statute
10 in 1995?

11 A. Not really.

12 Q. Well, did you know in 1995 that in
13 order to obtain a material witness warrant, an
14 attorney for a party had to submit a sworn
15 statement to the court?

16 A. I can't recall if I was.

17 Q. Well, did you know in 1995 whether
18 or not before a court could issue a material
19 witness warrant, it had to be satisfied based
20 on a sworn affirmation or affidavit, that
21 there was reasonable cause to issue such a
22 warrant or order?

23 A. I don't recall.

24 MR. LARKIN: Objection to form.

25 Q. And it is your testimony that the

1 M. F. VECCHIONE

2 Angel Santos material witness order is the
3 only one that was ever applied for on your
4 behalf in your career?

5 MR. LARKIN: Objection to the
6 form. Please don't mischaracterize
7 testimony like that.

8 Go ahead, you can answer.

9 A. That's not what I said. I said
10 that's the one that I recall.

11 Q. Well, do you recall any other one?

12 A. I just said that's the one that I
13 recall.

14 Q. Do you recall any other one?

15 A. That is the one that I recall.

16 Q. Without asking you whether you
17 recall any other specific case where you
18 applied for a material witness order, do you
19 recall that you or someone on your behalf ever
20 applied for a material witness order in any
21 other case that was assigned to you?

22 A. That's the one that I recall.

23 MR. LARKIN: Well, objection.
24 Objection. Go ahead.

25 THE WITNESS: I answered.

1 M. F. VECCHIONE

2 A. That's the one that I recall.

3 Do you want this back?

4 MR. RUDIN: Yes.

5 THE WITNESS: Do you want these
6 back, too.

7 MR. LARKIN: Just for the record
8 this is the original marked 148. I just
9 want to give it back to you in case you
10 want to keep it.

11 Q. Are you familiar with the article
12 175 of the penal law involving offering a
13 false instrument for filing?

14 A. I'm familiar that a penal section
15 exists, yes.

16 Q. Well, are you familiar with 175.3
17 offering a false instrument for filing in the
18 second degree?

19 A. I'm aware of the statute that is
20 entitled that, yes.

21 Q. Were you aware of that statute in
22 1995?

23 A. I would assume so, but I don't
24 recall.

25 Q. Now let me show you what's been

1 M. F. VECCHIONE

2 previously marked as Plaintiff's 141. I ask
3 you if you recognize that document.

4 A. I do.

5 Q. Would you please read into the
6 record paragraph 5. Well, withdrawn.

7 What do you recognize the document
8 as?

9 A. This is my affirmation in the 2006
10 440 motion of Mr. Collins.

11 Q. Is that your signature at the
12 bottom of the last page?

13 A. It is.

14 Q. And did you read over this
15 document before you signed it?

16 A. Yes.

17 Q. And did you sign it believing it
18 was a hundred percent accurate?

19 A. Yes.

20 MR. LARKIN: Objection to form.

21 MR. RUDIN: I'm sorry.

22 MR. LARKIN: Objection to the
23 form.

24 Go ahead, you can answer it.

25 A. Yes.

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1 M. F. VECCHIONE

2 Q. Who prepared this document, if you
3 know?

4 A. I don't recall.

5 Q. Well, do you remember whether or
6 not you prepared it yourself?

7 A. Don't recall.

8 Q. Would you read paragraph 5 into
9 the record, please.

10 A. "As the lead prosecutor, I and I
11 alone, determine the course of our
12 investigation and the manner in which the
13 trial was conducted. I held myself and those
14 who worked for me to a high professional
15 standard. Although ADA Posner was an
16 experienced lawyer, he was not an experienced
17 prosecutor or investigator, therefore, he did
18 not act without consulting me and he would not
19 have withheld information from me. Charles
20 Posner was in all respects a person and a
21 public servant of impeccable character.

22 Likewise, ADA Frascogna was not an
23 experienced prosecutor but she was and is a
24 person and a prosecutor of great integrity."

25 Q. Did you believe that statement to

1 M. F. VECCHIONE

2 be accurate when you signed this affirmation?

3 A. I did.

4 Q. Do you believe it today to be
5 accurate?

6 A. I do.

7 Q. Now, as of 1995 had you received
8 any training at the Brooklyn District
9 Attorney's office with regard to disclosure of
10 information under Rosario or Brady?

11 MR. LARKIN: Just objection to
12 form. You mean formal classroom
13 training, or any kind of training?

14 MR. RUDIN: Any kind of training.

15 MR. LARKIN: Any kind of training.

16 A. Yes.

17 Q. And what was that training?

18 A. Well, supervisors and senior trial
19 assistants were people who I would consult and
20 discuss these matters with, and they would
21 give me the benefit of their wisdom.

22 Q. Did you attend any formal classes
23 with respect to Rosario or Brady on or before
24 March of 1995?

25 MR. LARKIN: Form objection.

1 M. F. VECCHIONE

2 A. In law school?

3 Q. No, at the DA's office.

4 MR. LARKIN: Objection.

5 Go ahead.

6 A. I can't recall.

7 Q. Did you receive any training
8 materials prior to March of 1995 at the DA's
9 office concerning Rosario or Brady?

10 A. I can't recall.

11 MR. LARKIN: Form objection.

12 Q. Were you aware in March of 1995 of
13 whether or not the office had any policy or
14 policies with respect to disclosing Rosario
15 material?

16 MR. LARKIN: Objection to form.

17 A. I'm not sure I understand the
18 question. It's a legal requirement.

19 Q. You were aware in March of 1995
20 that it was a legal requirement, right, that's
21 what you just said?

22 A. I was aware of the Rosario rule.
23 I was a defense attorney for 10 years.

24 Q. And you were also aware of the
25 Brady rule?

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2 A. Of course.

3 Q. Aside from being aware that a
4 prosecutor had certain obligations under
5 Rosario and Brady, were you aware of whether
6 or not under Mr. Hynes, the office had any
7 more specific policy with respect to
8 disclosing Brady or Rosario material than
9 that?

10 MR. LARKIN: Well, objection.

11 MS. POLSTEIN: Objection.

12 MR. LARKIN: I mean, the rules are
13 in the cases. Objection.

14 You can answer. I'm sorry.

15 A. I'm not -- I don't recall any.

16 Q. Did you receive any kind of
17 written policy or statement at the DA's office
18 prior to March of 1995 instructing you what
19 kinds of materials you were required to
20 disclose under Rosario or Brady?

21 A. Don't recall.

22 MR. RUDIN: Can I have this
23 marked, please.

24 (Plaintiff's Exhibit 151,
25 Memorandum dated May 22, 1997,

1 M. F. VECCHIONE
2 bearing Bates Nos. NYC894-906
3 marked for identification, as of
4 this date.)

5 Q. Mr. Vecchione, I show you
6 Plaintiff's 151 and ask you if you recognize
7 it.

8 A. Not really.

9 Q. Well, is this in the form of a
10 memorandum?

11 A. Yes.

12 Q. And does it indicate that it is
13 from you and Roseanne McKechnie?

14 A. It does.

15 Q. And does it contain next to your
16 name, your initials?

17 A. It does.

18 Q. Did you handwrite those initials?

19 A. It appears to me to be that I did,
20 yes.

21 Q. Do you have any recollection of
22 this document?

23 A. None.

24 Q. Do you see at the bottom of page 5
25 which is Bates stamped 898, there is a Roman

1 M. F. VECCHIONE

2 numeral III C?

3 MR. LARKIN: Objection. If you
4 are going to ask him questions about the
5 document, I think the witness ought to
6 have an opportunity to review it. So if
7 you want to ask him questions, I would
8 ask the witness take as much time as you
9 need, review the document and then you
10 can answer Mr. Rudin's questions.

11 MR. RUDIN: I don't think it is
12 necessary to review the document. I
13 just want to ask him about one specific
14 statement. We can go off the record.

15 MR. LARKIN: I appreciate that
16 that's what you think. But, no, we are
17 not going off the record. The witness
18 is entitled to review any document that
19 you show him. Since you didn't want to
20 identify the exhibits in advance of this
21 deposition, despite I believe our
22 request that you do so, so the witness
23 is going to take as much time as is
24 needed to review the document before he
25 answers any of your questions about it.

1 M. F. VECCHIONE

2 MR. RUDIN: I will withdraw the
3 question.

4 Q. Mr. Vecchione, would you have
5 initialed this memorandum without having read
6 it?

7 MR. LARKIN: Objection.
8 Objection.

9 Go ahead.

10 A. No.

11 Q. Did you initial it without having
12 read it?

13 MR. LARKIN: Objection. In 1997?

14 MR. RUDIN: Yes.

15 A. You know, I don't recall as I sit
16 here today.

17 Q. Well, based upon your practice in
18 1997 would you have -- well, withdrawn. I
19 asked that question.

20 MR. RUDIN: Mark this.

21 (Plaintiff's Exhibit 152,
22 Memorandum dated May 11, 1992,
23 bearing Bates Nos. KCDATRAIN
24 406-408 marked for identification,
25 as of this date.)

1 M. F. VECCHIONE

2 Q. Mr. Vecchione, do you recognize
3 Plaintiff's 152?

4 A. I do not.

5 Q. Have you ever seen it before?

6 A. I can't recall.

7 Q. Is it accurate to say that it is a
8 memorandum that's entitled Making an Adequate
9 Record Regarding Disclosure of Rosario
10 Material?

11 A. Are you asking me what's written
12 on the piece of paper?

13 Q. Yes.

14 A. Making an Adequate Record
15 Regarding Disclosure of Rosario Material.

16 Q. Prior to March of 1995 did you
17 receive any training at the Brooklyn DA's
18 office concerning this subject of making an
19 adequate record regarding disclosure of
20 Rosario material?

21 MR. LARKIN: Objection. I think
22 that's been asked and answered, but go
23 ahead.

24 A. I can't recall.

25 Q. Was it your practice as of March

1 M. F. VECCHIONE

2 of 1995 to make an adequate record concerning
3 disclosure of Rosario material?

4 MR. LARKIN: Form objection.

5 A. Sure, as best I could, yeah.

6 Q. Was it your practice as of March
7 of 1995 to make an adequate record concerning
8 disclosure of discovery material?

9 A. As best I could, yes.

10 Q. Was it your practice in March of
11 1995 to make an adequate record regarding
12 disclosure of Brady material?

13 MR. LARKIN: Objection to form.

14 A. Yes.

15 MR. RUDIN: Mark this.

16 (Plaintiff's Exhibit 153,
17 Memorandum dated February, 1994,
18 Re: Duty to Disclose Under Rosario
19 and Brady, bearing Bates Nos.
20 KCDATRAIN 042-62 marked for
21 identification, as of this date.)

22 Q. Mr. Vecchione, I show you
23 Plaintiff's 153 and ask you if you recognize
24 it.

25 A. I do not.

1 M. F. VECCHIONE

2 Q. Do you recall ever seeing it
3 before?

4 A. No recollection. No, I don't
5 recall. I don't recall.

6 Q. At the Brooklyn DA's office have
7 you ever participated in training ADAs about
8 their Rosario or Brady obligations?

9 MR. LARKIN: Objection to form.
10 Has he ever conducted such training or
11 training assistance?

12 MR. RUDIN: Yes.

13 MR. LARKIN: That's what you are
14 asking?

15 A. The way I just described
16 discussing it with them during the course of
17 their work under me.

18 Q. Have you ever been involved in a
19 training session where you or another ADA
20 instructed a group of ADAs about their Brady
21 or Rosario obligations?

22 A. Yes.

23 Q. When was the last time you were
24 involved in such a training session?

25 A. Eight months ago, perhaps.

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2 Q. And where was that conducted?

3 A. In the Supreme Court building at
4 320 Jay Street.

5 Q. And how many people were present?

6 A. It filled the entire jury assembly
7 room, so I have no idea how many. A lot.

8 Q. And were these individuals
9 assigned to any particular bureau?

10 A. It was, a memo was sent to the
11 entire office to the best of my recollection.

12 Q. And approximately how many ADAs
13 were there?

14 A. A lot.

15 Q. More than 50?

16 A. A lot.

17 Q. More than 50?

18 A. Yes.

19 Q. And were you involved in
20 presenting to that group?

21 A. I was not.

22 Q. Who presented to the group?

23 A. I remember Judge Kamins, I
24 remember a professor named Bruce Green I think
25 his name was, and John O'Mara. That's what I

1 M. F. VECCHIONE

2 recall.

3 Q. Were you ever present for a
4 presentation to members of the rackets bureau
5 that Lauren Hirsch participated in concerning
6 Brady or Rosario obligations?

7 MR. LARKIN: Objection. Go ahead,
8 tell him.

9 A. The answer specifically to that
10 question is no. Because there was no such
11 presentation about Rosario and Brady material.

12 Q. Was there ever a presentation
13 within the last two years to members of the
14 rackets bureau concerning recording of
15 statements by witnesses where that subject
16 came up?

17 MR. LARKIN: Objection: form.

18 A. Yes.

19 Q. And when did that presentation
20 occur?

21 A. I don't know. Within the last
22 three years. I don't have a specific
23 recollection of it, of the date.

24 Q. And about how many people were
25 present?

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2 A. 50, 30, 40. I don't know. I
3 really don't know, I'm sorry.

4 Q. Did you participate in the
5 presentation?

6 A. I listened.

7 Q. Did you make any remarks during
8 that presentation?

9 A. Perhaps to greet everybody and to
10 say, settle down, we are going to start.

11 Q. Who made the presentation?

12 A. It was made by, the one I'm
13 thinking of was made by Lauren Hirsch
14 regarding the human trafficking cases and the
15 handling of the human trafficking cases.

16 I don't recall if there were any
17 other speakers. I just don't recall.

18 Q. During that presentation did Ms.
19 Hirsch or anybody else make the statement, in
20 words or in substance, that the statements of
21 human trafficking victims should not be
22 recorded?

23 A. Don't recall that.

24 Q. Did Ms. Hirsch or anyone else in
25 your presence make the statement that if a

1 M. F. VECCHIONE

2 human trafficking victim initially denied
3 abuse, that that information should not be
4 disclosed to the defense?

5 A. I don't recall that.

6 Q. What was the substance of Ms.
7 Hirsch's remarks concerning recording of
8 statements by human trafficking victims?

9 A. I don't recall.

10 MR. LARKIN: Objection, go ahead.

11 Q. I'm sorry?

12 A. I don't recall.

13 Q. No recollection at all?

14 A. Other than it happened, I don't
15 recall.

16 Q. Was that session audiotaped or
17 videotaped?

18 A. I don't recall.

19 Q. After that session was there any
20 controversy in the office about whether her
21 remarks were proper?

22 A. Don't recall.

23 MR. LARKIN: Objection to form.

24 A. Don't recall.

25 Q. Well, was there any discussion in

1 M. F. VECCHIONE

2 the office about whether or not her remarks
3 were proper to your knowledge?

4 A. Don't recall.

5 MR. LARKIN: Objection to form.

6 Have we established a time frame
7 for this presentation, when it occurred
8 approximately?

9 MR. RUDIN: He said it was within
10 the last three years.

11 MR. LARKIN: Just within the last
12 three years.

13 Q. Is that your best recollection?

14 A. It is. I don't recall when it is
15 that she resigned, so I can't remember when it
16 was before that, but it was certainly within
17 the last three years because the human
18 trafficking unit began about three years ago
19 so it had to be some time after that.

20 Q. During that training session did
21 Ms. Hirsch say anything that you disagreed
22 with?

23 MR. LARKIN: Objection.

24 THE WITNESS: Answer?

25 MS. KRASNOW: You may answer.

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2 MR. LARKIN: I'm sorry, answer.

3 A. I don't recall what was said, so I
4 don't recall.

5 Q. Are you aware of whether or not
6 anyone in the office communicated with any of
7 the individuals who were present for Ms.
8 Hirsch's remarks, any correction of what she
9 said?

10 MR. LARKIN: Objection.

11 A. Don't recall.

12 Q. Do you have any recollection as
13 you sit here now of any disclosure of
14 discovery, Rosario or Brady material, that you
15 made in the Jabbar Collins case to defense
16 counsel that you did not record either in a
17 document or in a formal statement on the
18 record?

19 MR. LARKIN: Objection. You can
20 answer.

21 A. Can you repeat the question.

22 MR. RUDIN: Please read it back.

23 (Record read.)

24 MR. LARKIN: Just note the form
25 objection.

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2 A. Yeah, I don't recall. But I read
3 the transcript so I know that I did, but I
4 don't recall specifically.

5 Q. Well, what did you disclose to
6 defense counsel -- I'm sorry, I withdraw that.

7 Aside from what appears in the
8 transcript of the trial and in any document,
9 do you have any recollection of anything else
10 that was either discovery material, Rosario
11 material or Brady material that you disclosed
12 to defense counsel during or before the
13 Collins trial?

14 A. I don't recall.

15 MR. LARKIN: Objection to that.
16 Sorry.

17 For the record, Joel, you are
18 aware that there is a gap in the
19 transcript, right, the trial transcript?
20 Your question assumes --

21 MR. RUDIN: I'm aware there is a
22 gap in the numbering. I'm not aware
23 that there is any gap in the transcript.

24 MR. LARKIN: Well, obviously, we
25 are going to take issue with that. You

1 M. F. VECCHIONE

2 know there is a gap in the transcript.

3 MR. RUDIN: This was discussed in
4 front of Judge Irizarry and discussed
5 with some other material in the case.

6 The court reporter has a jump in
7 numbering that does not necessarily
8 mean, in fact, it does not mean that
9 there are any proceedings that are
10 missing, if that's your point.

11 MR. LARKIN: Well, we don't
12 believe that that is accurate. I think
13 you ought to know better. But in any
14 event.

15 MR. RUDIN: I'm sorry. I know
16 better?

17 MR. LARKIN: You should.
18 Shouldn't you?

19 MR. RUDIN: Have you ever handled
20 a criminal appeal?

21 MR. LARKIN: I have never done a
22 criminal appeal.

23 MR. RUDIN: All right, well, then
24 you obviously don't know better.

25 Q. Mr. Vecchione, I show you what's

1 M. F. VECCHIONE

2 been marked as Plaintiff's 21 and ask you if
3 you recognize it?

4 A. I saw this during prep.

5 Q. Did you ever see it before?

6 A. I can't -- I don't have a
7 recollection of it. I don't recall.

8 Q. Did you disclose that document to
9 defense counsel in the Collins case?

10 MR. LARKIN: Objection.

11 A. I don't recall.

12 Q. Well, are you aware of any record
13 showing that you disclosed it to defense
14 counsel?

15 MR. LARKIN: Well, objection. If
16 you don't show him the records of what
17 was turned over. I object to the
18 question.

19 MR. RUDIN: I'm asking if he is
20 aware of any record that it was
21 disclosed to defense counsel.

22 MR. LARKIN: Well, if you don't
23 show him the records, he can't really
24 answer that. That's my objection.

25 I'm sorry, you can answer the

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2 question to the best you can.

3 A. What's the question, again?

4 Q. Are you aware of any record
5 showing that you disclosed this document to
6 defense counsel?

7 A. Don't recall if there was any or
8 was not any. I just don't recall. It's a
9 long time ago.

10 Q. I show you Plaintiff's 132. Have
11 you ever seen that document before?

12 A. I can't recall if I did or didn't.

13 Q. Do you have any recollection of
14 disclosing that document to defense counsel in
15 the Collins prosecution?

16 MR. LARKIN: Same objection to
17 this line of questions. You can answer.

18 A. Don't recall.

19 Q. I show you Plaintiff's 133. Have
20 you ever seen that document before?

21 A. Don't recall.

22 Q. Do you have any recollection of
23 disclosing that document to defense counsel in
24 the Collins prosecution?

25 A. Don't recall.

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2 MR. LARKIN: Same objection.

3 Q. Show you Plaintiff's 58. Have you
4 ever seen that document before?

5 A. During prep I saw it.

6 Q. Before prep?

7 A. Don't recall.

8 Q. Do you have any recollection of
9 disclosing that document to defense counsel in
10 the Collins prosecution?

11 A. Don't recall.

12 Q. I show you Plaintiff's 135. Do
13 you recognize that document?

14 A. Saw it during prep.

15 Q. Did you ever see it before prep?

16 A. Don't recall.

17 Q. Do you have any recollection of
18 disclosing that document to the defense in the
19 Collins prosecution?

20 MR. LARKIN: Same objection.

21 A. Don't recall.

22 Q. I'm sorry?

23 A. I don't recall.

24 MR. RUDIN: Why don't we take a
25 break now for the tape.

1 M. F. VECCHIONE

2 THE VIDEOGRAPHER: We are now
3 going off the record at approximately
4 11:15 a.m. This is the end of disk No.
5 1.

6 (Recess taken.)

7 THE VIDEOGRAPHER: This is the
8 beginning of disk No. 2 in the Vecchione
9 deposition. We are now going back on
10 the record at approximately 11:22 a.m.

11 MR. RUDIN: We are on the record
12 now?

13 THE VIDEOGRAPHER: Yes, we are,
14 sir.

15 BY MR. RUDIN:

16 Q. Mr. Vecchione, would you take
17 another look at Plaintiff's Exhibit 21. Do
18 you recognize the signature at the bottom of
19 that document?

20 A. No, I don't.

21 Q. Do you see that it is a signature
22 of Edwin Oliva?

23 MR. LARKIN: Objection.

24 A. I don't recognize it.

25 Q. Were you aware at any point during

1 M. F. VECCHIONE

2 the trial of Mr. Collins that Edwin Oliva had
3 made any kind of handwritten statement to
4 police in connection with his own arrest for
5 robbery?

6 A. I don't recall.

7 Q. Did you ever disclose to defense
8 counsel during the Collins prosecution that
9 Mr. Oliva had made a written statement in
10 connection with his own arrest for robbery?

11 A. I can't recall.

12 Q. I asked you a moment ago about
13 Plaintiff's 58.

14 A. Yes. Okay.

15 Q. Do you recall ever disclosing to
16 the defense any of the information contained
17 in Plaintiff's 58?

18 A. I can't recall.

19 MR. LARKIN: Just objection. Just
20 take a moment, look at the document.

21 A. Okay.

22 MR. LARKIN: And give the witness
23 an opportunity to do that.

24 Q. Now that you have looked at the
25 document, is your answer the same?

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2 MR. LARKIN: Just objection.

3 Objection. Any of the information?

4 MR. RUDIN: Yes.

5 MR. LARKIN: Just note an
6 objection to the form. You can answer.

7 A. I don't recall.

8 Q. All right. Let me show you
9 Plaintiff's 135 and ask you if you recall
10 disclosing any of the information in
11 Plaintiff's 135 to defense counsel?

12 A. I don't recall.

13 MR. LARKIN: Yeah, the same
14 objection to the form of that question.

15 Q. Just to be clear --

16 A. I'm sorry, go ahead.

17 Q. I'm asking you during the course
18 of Mr. Collins' criminal prosecution did you
19 disclose the information contained in
20 Plaintiff's 135 to defense counsel?

21 A. I don't --

22 MR. LARKIN: Just objection. I
23 mean, the record speaks for itself.
24 There is a notation here that there was
25 a plea to attempted robbery in the 3rd.

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2 You know that that was disclosed to the
3 defense. The fact that he was arrested
4 on the 9th --

5 MR. RUDIN: Are you testifying,
6 Mr. Larkin? I asked the witness.

7 MR. LARKIN: Joel, ask him a fair
8 question, and he will give you a fair
9 answer. All right.

10 MR. RUDIN: If you have an
11 objection as to the form of the
12 question, then make an objection.

13 MR. LARKIN: That's my objection.

14 MR. RUDIN: Your client is an
15 experienced attorney who can answer a
16 question.

17 A. You asked me about the document,
18 right?

19 Q. Yes. Plaintiff's Exhibit 135, do
20 you have any recollection of disclosing any of
21 the information contained in that document to
22 defense counsel in the Collins trial?

23 MR. LARKIN: Objection.

24 A. That's not what you asked me
25 before. You asked me about the document.

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2 The document I don't recall. Of
3 course I revealed to defense counsel about the
4 plea that Mr. Oliva took.

5 Q. Anything else contained in
6 Plaintiff's 135 that you revealed to the
7 defense?

8 MR. LARKIN: Just objection. I
9 object to the question. Give the
10 witness the opportunity to review the
11 entire document.

12 MR. RUDIN: Of course.

13 MR. LARKIN: And I think you ought
14 to show him the representations made on
15 the record as well at the trial, and the
16 witness is entitled to ask for that if
17 he needs it.

18 MR. RUDIN: I'm asking for his
19 present recollection, Mr. Larkin.

20 MR. LARKIN: I understand.

21 A. Do you want to direct me to
22 something specific?

23 Q. Do you have any recollection of
24 disclosing any of the information in this
25 document, aside from the crime that Mr. Oliva

1 M. F. VECCHIONE
2 pleaded guilty to, to the defense in Mr.
3 Collins' prosecution.

4 MR. LARKIN: Just objection.
5 Let's go line by line. And objection to
6 form.

7 MR. RUDIN: All right. Let's go
8 line by line.

9 Q. Do you see there is a date
10 February -- on March 9th?

11 A. Yes.

12 Q. Do you see it says "for defense
13 counsel to come back, offered to be held open
14 until 3/9 as per judge, do not file until 3/9,
15 indication defendant is informant in a
16 homicide case"?

17 A. Okay.

18 Q. Did you reveal that information to
19 defense counsel?

20 MR. LARKIN: Objection.

21 A. The fact that he was an informant
22 in a homicide case, yes, of course.

23 Q. Did you reveal to defense counsel
24 that a plea offer was being held open as per
25 the judge based upon an indication that he was

1 M. F. VECCHIONE

2 an informant in a homicide case?

3 MR. LARKIN: Objection. Don't
4 mischaracterize the document.

5 Go ahead. I'm sorry.

6 A. I can't answer that question
7 because you've added a fact that is not in
8 evidence anywhere.

9 Q. Did you know at the time of Mr.
10 Collins' trial whether or not the judge in Mr.
11 Oliva's robbery case held open a plea offer
12 because it had been indicated to him that Mr.
13 Oliva was an informant in a homicide case?

14 MR. LARKIN: Objection.

15 A. What I informed the defense
16 counsel is on the record, and that's what I
17 stand by.

18 Q. Did you inform defense counsel of
19 the information that I just provided in my
20 previous question off the record?

21 MR. LARKIN: Objection. You
22 didn't provide him with information.
23 You made a representation, counsel. It
24 may or may not be accurate. In fact, it
25 isn't accurate, as you know. So

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2 objection to the form of the question.

3 A. What I put on the record --

4 MR. LARKIN: You characterize the
5 documents in evidence that isn't in
6 front of the witness. I mean, come on.

7 MR. RUDIN: All right, I'm going
8 to withdraw that question because it's
9 been hopelessly garbled.

10 Q. Mr. Vecchione, did you inform
11 defense counsel in the Collins prosecution off
12 the record, about any information in addition
13 to whatever you provided him on the record,
14 concerning the robbery prosecution of Edwin
15 Oliva?

16 A. What I informed --

17 MR. LARKIN: Form objection.

18 A. What I informed and advised and
19 disclosed to counsel was on the record.

20 Q. Thank you. That answers the
21 question.

22 Mr. Vecchione, let me show you
23 Plaintiff's 59. Have you ever seen that
24 document before?

25 A. During prep.

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2 Q. Before prep?

3 A. Can't recall ever seeing this.

4 Q. Do you recall disclosing that
5 document to defense counsel during the Collins
6 trial?

7 A. Don't recall.

8 Q. Were you aware during the trial of
9 Mr. Collins, of any call that was made by Mr.
10 Oliva's attorney in his robbery case to the
11 District Attorney's office seeking a more
12 advantageous plea offer?

13 MR. LARKIN: Objection to form.

14 A. I don't recall any such call.

15 Q. Did you disclose any such call to
16 defense counsel for Mr. Collins?

17 MR. LARKIN: Objection to form.

18 A. What I disclosed is on the record.

19 Q. Did you disclose to Mr. Collins'
20 counsel before or during his trial, that Mr.
21 Oliva in some manner had recanted his original
22 statement to police?

23 MR. LARKIN: Note the form
24 objection.

25 You can answer.

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2 A. There was no recantation.

3 Q. What do you mean by that?

4 A. Just what I said.

5 Q. Did you disclose to defense
6 counsel for Mr. Collins before or during his
7 trial, whether or not Mr. Oliva had made any
8 statement to the District Attorney's office
9 that was inconsistent with the written
10 statement he made to police?

11 MR. LARKIN: Form objection.

12 A. I don't recall any inconsistent
13 statements. I just don't recall.

14 Q. Well, do you recall disclosing any
15 inconsistent statements to defense counsel?

16 MR. LARKIN: Objection.

17 A. I don't recall.

18 Q. Did you disclose to Mr. Collins'
19 counsel before or during his trial, that Mr.
20 Oliva at the time that he was interviewed and
21 made a -- withdrawn.

22 Did you disclose to Mr. Collins'
23 counsel before or during his trial, that Mr.
24 Oliva was observed by police detectives at the
25 time they interviewed him following his

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2 robbery arrest, to be drooling?

3 MR. LARKIN: Objection.

4 A. What I disclosed to the counsel is
5 on the record.

6 Q. Were you aware at the time of Mr.
7 Collins' trial, of any information to the
8 effect that Mr. Oliva, at the time he was
9 interviewed by police following his arrest for
10 robbery, was observed drooling?

11 MR. LARKIN: Objection.

12 A. I'm sorry, say it again. Was I
13 aware of that?

14 Q. Yes.

15 MR. LARKIN: Objection.

16 A. I don't recall being aware of
17 that.

18 Q. Were you aware before the verdict
19 in Mr. Collins' case of whether or not any
20 police detective at the time that Mr. Oliva
21 was interviewed following his robbery arrest,
22 observed him crying?

23 MR. LARKIN: Objection.

24 A. I was never aware of that.

25 Q. Were you aware at the time of Mr.

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2 Collins' trial, that during the period that
3 Mr. Oliva was interrogated or questioned by
4 detectives following his arrest for robbery,
5 he was not given any food or water?

6 MR. LARKIN: Objection.

7 A. I'm not aware of any such thing.

8 Q. Were you aware at the time of Mr.
9 Collins' trial, that the detective who
10 obtained Mr. Oliva's signature on a written
11 statement following Mr. Oliva's arrest for
12 robbery, did not observe whether Mr. Oliva
13 even read over the statement?

14 MR. LARKIN: Objection.

15 A. I have no clue as to what you are
16 asking me.

17 Q. By that do you mean that you were
18 not aware of that information?

19 MR. LARKIN: Objection.

20 A. I do not understand your question
21 is what I mean. I'm sorry, let me be more
22 specific.

23 Q. Did any police detective ever tell
24 you before the verdict in Mr. Collins' case,
25 that Mr. Oliva did not read over the written

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2 statement that contains a signature before he
3 signed it?

4 A. I recall no --

5 MR. LARKIN: Objection.

6 Sorry.

7 A. I recall no such statement.

8 Q. Did any detective ever tell you
9 before the verdict in Mr. Collins' trial, that
10 he was not sure whether or not Mr. Oliva read
11 over his written statement before he signed
12 it?

13 MR. LARKIN: Objection.

14 MS. POLSTEIN: Objection.

15 A. I recall no such statement.

16 Q. Did anyone employed by the New
17 York City Police Department tell you before
18 the verdict in Mr. Collins' case that at the
19 time that Mr. Oliva was questioned by police
20 following his arrest for robbery, that he
21 appeared to be going through drug withdrawal?

22 A. No.

23 MR. LARKIN: Objection.

24 A. I recall no such statement.

25 Q. Did anyone ever tell you that?

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2 MR. LARKIN: Objection.

3 A. I recall no such statement.

4 Q. By anyone?

5 A. I recall no such statement.

6 Q. By anyone?

7 MR. LARKIN: Objection.

8 A. That's the question you asked me,
9 right?

10 Q. I asked you first about whether a
11 detective ever told you that. Now I'm asking
12 you whether anyone ever told you that.

13 A. I --

14 MR. LARKIN: Objection. He
15 answered you.

16 A. I recall no such statement.

17 Q. Previously I showed you
18 Plaintiff's 94 which is the Damiani order for
19 Edwin Oliva dated January 26, 1995.

20 A. Okay.

21 Q. Did you disclose that document to
22 defense counsel in the Jabbar Collins
23 prosecution?

24 A. I don't recall.

25 MR. LARKIN: Objection. Hold on a

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2 minute. What is that document,
3 Plaintiff's 94?

4 MR. RUDIN: Yes.

5 MR. LARKIN: Just give us one
6 second. Okay.

7 The question is was Plaintiff's 94
8 disclosed to defense counsel before the
9 trial.

10 MR. RUDIN: Before or during the
11 trial.

12 A. I don't recall.

13 Q. I'm sorry?

14 A. I'm sorry, I don't recall.

15 Q. Do you have any record that would
16 indicate whether or not it was disclosed?

17 A. Do I, personally?

18 Q. Yes.

19 A. In my pocket?

20 Q. Have you seen any record
21 indicating that it was disclosed?

22 MR. LARKIN: Note the form
23 objection.

24 You can answer.

25 A. I don't have any recollection of

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2 any -- I don't recall. I don't recall.

3 Q. Let me show you what's been marked
4 as Plaintiff's 100. Do you have any
5 recollection of disclosing that to defense
6 counsel before or during the trial of Mr.
7 Collins?

8 MR. LARKIN: Objection.

9 A. This is -- I have no recollection
10 of that.

11 Q. By the way, do you see the name
12 Charles Posner at the bottom?

13 A. Yes.

14 Q. Do you recognize whether or not
15 that's his signature?

16 A. I do not.

17 Q. Let me show you Plaintiff's 102.
18 Do you recognize that document?

19 A. It's what you showed me before.

20 Q. That's a Damiani order for the
21 production of Edwin Oliva?

22 A. That's what it appears to be, yes.

23 Q. And it is signed by Justice
24 Egitto. Is that right?

25 A. Page 2 has Justice Egitto's

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2 signature on it, yes.

3 Q. And it is based upon an
4 affirmation in the name of Charles Posner?

5 A. The affirmation is in the name of
6 Charles Posner, yes.

7 Q. Did you disclose this document to
8 defense counsel during or before the trial of
9 Mr. Collins?

10 A. I don't recall.

11 Q. Would you look at the second page
12 of that document, please.

13 A. Sure. Okay, go ahead.

14 Q. Do you see that there is a place
15 for the witness, Mr. Oliva, to consent to go
16 into the temporary custody of police officers
17 or detective investigators?

18 A. I see a spot for a person to
19 consent, yes.

20 Q. Is Mr. Oliva's signature in that
21 spot?

22 MR. LARKIN: Objection.

23 Q. I'm sorry?

24 MR. LARKIN: You can answer.

25 A. Well, no, it's not

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2 Q. No, right. And do you see at the
3 bottom that it says "I refuse to go down with
4 detective DA" and then there is a signature
5 Edwin Oliva?

6 A. I see those words and I see a
7 signature that says Edwin Oliva, yes.

8 Q. Were you aware of those words and
9 that signature during Mr. Collins' trial?

10 A. I can't recall that.

11 Q. Well, did you ever become aware
12 that Mr. Oliva had made a statement in words
13 or in substance, that he did not wish to go
14 with detective investigators of the Brooklyn
15 DA's office on or about March 6 1995?

16 A. No.

17 MR. LARKIN: Objection to the
18 form.

19 A. No, I don't recall.

20 MR. LARKIN: And just for the
21 record, the first page of the exhibit
22 has the date order on March 7, the State
23 Department of Correction deliver custody
24 of Edwin Oliva, and Oliva's signature is
25 dated 3/6. I'm just not sure if this

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2 document goes together, if these pages
3 go together. They may have been
4 produced that way, though.

5 MR. RUDIN: They obviously go
6 together if you look at the word at the
7 bottom of the first page and continues
8 on the second page. This is what was
9 produced by you.

10 MR. LARKIN: Well, I understand.
11 It is a form, though.

12 MR. RUDIN: And my question
13 isn't --

14 MR. LARKIN: There is also another
15 document form dated March 6 which is the
16 reason I raise the question. That's the
17 only reason.

18 MR. RUDIN: All right.

19 Q. Mr. Vecchione, did you ever tell
20 defense counsel, in words or in substance, and
21 now I mean orally, that Mr. Oliva had made a
22 statement refusing to go with detective
23 investigator's from the DA's office?

24 A. Don't recall.

25 MR. LARKIN: Objection.

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2 Q. Let me show you Plaintiff's 91.
3 It is a material witness order and warrant and
4 affirmation in regard to Angel Santos?

5 A. Yes.

6 Q. Did you ever disclose any of those
7 documents to defense counsel before or during
8 the trial of Mr. Collins?

9 MR. LARKIN: Just objection. I'm
10 sorry. You have got Plaintiff's 91. Do
11 you have an extra copy for us?

12 MR. RUDIN: I gave you a copy.

13 MR. LARKIN: I'm sorry. Just give
14 us a moment. I'm sorry.

15 MR. RUDIN: Sure.

16 (Discussion off the record.)

17 MR. LARKIN: Okay. 91.

18 MR. RUDIN: Let me withdraw the
19 question and ask it again.

20 Q. Mr. Vecchione, do you have any
21 recollection of disclosing Plaintiff's Exhibit
22 91, or any of its contents, to defense counsel
23 before or during the trial of Mr. Collins?

24 MR. LARKIN: Objection to the
25 form.

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2 MS. POLSTEIN: Objection as to
3 form.

4 MR. LARKIN: I mean, the document
5 itself?

6 MR. RUDIN: Right.

7 MR. LARKIN: Any of the
8 information in the document? If so, I
9 would ask, give the witness the
10 opportunity to read the entire document
11 and respond to his question.

12 MR. RUDIN: Let me withdraw the
13 question in light of your objection.

14 Q. Do you have any recollection of
15 disclosing Plaintiffs' Exhibit 91, or any of
16 the pages making up Plaintiffs' Exhibit 91, to
17 defense counsel before or during the trial of
18 Mr. Collins?

19 A. I don't understand the question.
20 The actual pages themselves?

21 Q. Any of the pages.

22 A. The actual pages themselves?
23 I don't have any recollection of
24 that.

25 Q. Let me break it down.

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2 Did you disclose to defense
3 counsel during Mr. Collins' trial, or before
4 his trial, a copy of a material witness order
5 signed by Justice Egitto for Angel Santos?

6 A. I answered that before. I don't
7 recall.

8 Q. Did you disclose to defense
9 counsel an arrest warrant for Mr. Santos
10 signed by Justice Egitto on February 23, 1995?

11 MR. LARKIN: Objection.

12 The document itself?

13 MR. RUDIN: Yes.

14 MS. POLSTEIN: I would join in
15 that objection.

16 A. I don't recall.

17 Q. All right, just to eliminate these
18 objections.

19 Did you disclose the first page of
20 Plaintiff's 91 to defense counsel during the
21 Collins trial?

22 A. I don't recall.

23 Q. The second page?

24 A. I don't recall.

25 Q. The third page?

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2 A. Don't recall.

3 Q. The fourth page?

4 A. Don't recall.

5 Q. The fifth page?

6 A. I don't recall.

7 MS. POLSTEIN: My objection is not
8 the document. It's that it seems there
9 are other sources of the disclosure,
10 possibly not the document, during the
11 course of the trial. Your question was
12 broad enough, you referred to the
13 document or its contents, and I believe
14 the contents were disclosed.

15 MR. RUDIN: No. I broke down the
16 question because of your objection.

17 MS. POLSTEIN: But my objection
18 was because the contents, what is
19 contained on the document I believe was
20 disclosed during the trial.

21 MR. RUDIN: No. Are you
22 testifying?

23 MS. POLSTEIN: I'm telling you the
24 source of my objection.

25 Q. Mr. Vecchione --



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2 A. Yes.

3 Q. -- just to be clear again. Did
4 you disclose a copy of any page contained in
5 Plaintiff's 91 to defense counsel before or
6 during Mr. Collins's trial?

7 MR. LARKIN: Just a form
8 objection.

9 A. That's why I asked you the
10 question. You are talking about the pages
11 themselves?

12 Q. Yes.

13 A. I don't recall that.

14 Q. Did you disclose to Mr. Collins'
15 defense attorney, before or during his trial,
16 that Mr. Santos had been arrested on a
17 material witness warrant or order?

18 MR. LARKIN: All right, I'm going
19 to object to this. The record indicates
20 clearly what was turned over, and you
21 are just not being fair to the witness.
22 I mean, the record shows that a number
23 of different facts about this witness
24 were disclosed. I don't want to
25 testify, but come on.

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2 Q. Did you disclose to Mr. Collins'
3 attorney in any off-the-record conversation
4 that Mr. Santos had been arrested on a
5 material witness warrant or order?

6 A. What I disclosed to Mr. Collins'
7 attorney is what is on the record.

8 Q. Did you disclose to Mr. Collins'
9 attorney at any time that Mr. Santos was held
10 in jail following the issuance of a material
11 witness order?

12 A. My answer is the same.

13 MR. LARKIN: Objection to form.
14 I'm sorry.

15 A. What I disclosed to Mr. Collins'
16 attorney is on the record.

17 Q. Did you disclose to Mr. Collins'
18 attorney at any point before the verdict in
19 the case, a copy of a 911 tape relating to the
20 shooting of Rabbi Pollack?

21 A. My recollection regarding the 911
22 tape is that I turned over a 911 printout, a
23 Sprint report and therefore I would
24 necessarily have turned over the tape, but I
25 don't have any recollection of that if counsel

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2 would have given me a blank tape to make a
3 copy. Or, as I said in my affirmation, I
4 would have told him that his voice was not on
5 the tape and he may not very well have asked
6 me for it. So that's my answer as I answered
7 in the affirmation.

8 Q. Well, let's break that down.

9 Mr. Vecchione, do you have any
10 recollection as you sit here now of providing
11 a copy of a 911 tape concerning the shooting
12 of Rabbi Pollack to defense counsel?

13 MR. LARKIN: Objection to the
14 form. Asked and answered.

15 Go ahead.

16 A. My recollection is what's
17 contained in my affirmation that I filed in
18 connection with the 440.

19 Q. But I'm asking a question today I
20 would like an answer today.

21 A. That's my answer.

22 Q. I would like you to answer the
23 question directly rather than referring to
24 some document.

25 MR. LARKIN: Objection, objection.

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2 Stop arguing with him.

3 MR. RUDIN: I'm entitled to an
4 answer, Arthur.

5 MR. LARKIN: He answered your
6 question. Make what you want of it.

7 MR. RUDIN: I asked -- I'm sorry.
8 I'm sorry?

9 MR. RUDIN: Make what you want of
10 it. He gave you the answer to the
11 question.

12 Q. Mr. Vecchione, as you sit here now
13 do you have a recollection of turning over a
14 copy of a 911 tape relating to the shooting of
15 Rabbi Pollack to defense counsel?

16 A. My recollection --

17 MS. POLSTEIN: Objection.

18 MR. LARKIN: Objection to the
19 form. It's not a yes or no question.

20 Go ahead.

21 A. My recollection from 19 -- from
22 2006 has not changed. My recollection today
23 is the same as it was in my affirmation.

24 Q. I'm asking you to express your
25 recollection today.

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2 MR. LARKIN: Objection.

3 A. Give me the affirmation and I will
4 read it into the record and then you will have
5 it.

6 MS. POLSTEIN: Objection.

7 MR. RUDIN: I'm entitled to his
8 testimony today.

9 MR. LARKIN: Objection. No,
10 actually he's answered your question and
11 essentially said he needs the
12 affirmation to refresh his memory.

13 Q. Is that what you are saying, you
14 need the affirmation to refresh your memory?

15 MR. LARKIN: Well, and he answered
16 20 seconds ago.

17 MR. RUDIN: No, he didn't.

18 MR. LARKIN: Yes, he did, Joel.
19 Please. Objection. It's been asked and
20 answered three times.

21 MR. RUDIN: I'm not required to
22 accept a carefully worded affidavit that
23 was submitted in some other proceeding 7
24 years ago. I'm entitled to the
25 testimony today. If you want to then

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2 explain it at some later time, that's
3 perfectly within your rights. I'm
4 entitled to ask the questions the way I
5 want and to get an answer.

6 MR. LARKIN: And I think he gave
7 you an answer.

8 MR. RUDIN: It is not a responsive
9 answer.

10 MR. LARKIN: Well, I disagree with
11 you. He gave you an answer five minutes
12 ago to the same question in some detail.
13 All right? It may not be the answer you
14 want, but that's his best answer.

15 Q. Mr. Vecchione, do I understand you
16 to be saying that you believe that you would
17 have told defense counsel about the 911 tape
18 or its contents, but you don't actually have
19 any recollection as you sit here now of doing
20 so?

21 MS. POLSTEIN: Objection.

22 MR. LARKIN: Well, objection to
23 the form.

24 MS. POLSTEIN:
25 Mischaracterization.

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2 MR. LARKIN: Yes, that is not
3 accurate, counsellor.

4 Go ahead. You can answer.

5 A. What I said in my affirmation is
6 what I said, and I stand by that.

7 MR. RUDIN: All right, I'm just
8 going to go through all the questions,
9 Mr. Larkin. If you want to direct him
10 not to answer, then I will just present
11 it to the judge for a ruling.

12 MR. LARKIN: I'm not instructing
13 the witness not to answer.

14 Q. So I would like an answer, Mr.
15 Vecchione, to this question.

16 As you sit here now, do you have
17 any recollection of turning over a copy of a
18 911 tape pertaining to the shooting of Rabbi
19 Pollack to defense counsel in Mr. Collins'
20 case?

21 MR. LARKIN: All right.
22 Objection, that's asked and answered.
23 Tell him for the fourth time.

24 A. My recollection is the same as it
25 was in my affirmation. Nothing has changed

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2 from 2006 until today.

3 Q. And I would like you to tell us
4 now what your recollection is as you sit here
5 now in 2013.

6 A. Please let me have my affirmation.

7 MR. RUDIN: Do you have his
8 affirmation?

9 MR. LARKIN: Well, you got the
10 marked copies, so it probably would be
11 better if you can show it to him.

12 MS. KRASNOW: I wrote on my copy.
13 It is 141.

14 MR. RUDIN: Okay, I'm sorry.

15 Q. Let me show you 141.

16 A. Okay.

17 "I did not knowingly or
18 intentionally fail to turn over to defense
19 counsel, a copy of the 911 tape or any other
20 Rosario, Brady material. Having provided
21 counsel with the Sprint report and the 911
22 printout, I necessarily would give counsel the
23 tape. Although, it is possible that counsel
24 did not provide a blank tape for copying. I
25 do not recall that to have happened. It is

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2 also possible that upon listening to the
3 tapes, I concluded that Angel Santos' call had
4 not been captured. In that situation I would
5 have informed counsel and left it up to him
6 whether he wanted a copy of the tape."

7 My recollection today is the same
8 as it was back in 2006.

9 Q. Well, did you, in fact, listen to
10 the tape and conclude that Angel Santos' voice
11 was not on it?

12 MS. POLSTEIN: Objection.

13 MR. LARKIN: Form objection.

14 A. In that situation I would have
15 informed counsel, I concluded -- it says upon
16 listening to the tape, that's what I said in
17 this affirmation.

18 Q. You wrote in your affirmation that
19 it is also possible that upon listening to the
20 tape, I concluded that Angel Santos' call had
21 not been captured. Isn't that what you wrote?

22 A. Correct.

23 Q. Well, I'm asking you, do you have
24 any recollection of in fact listening to the
25 tape and concluding that Angel Santos' call

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2 had not been captured?

3 A. I will read it again. It is
4 also --

5 Q. Mr. Vecchione, that's not
6 responsive.

7 MR. LARKIN: All right, objection.
8 Joel, please, you can't argue with him.

9 MR. RUDIN: I'm entitled to an
10 answer.

11 MR. LARKIN: He is going to answer
12 your question, how he is going to answer
13 it.

14 MR. RUDIN: This is evasive
15 contempt if it happened in front of a
16 judge.

17 MR. LARKIN: Please. Save it,
18 save the speeches. Just let him answer
19 your question and let's move on.

20 MR. RUDIN: I'm asking him to
21 answer my question. I'm not asking him
22 to read over an answer that isn't
23 responsive.

24 A. Ask me the question.

25 MR. LARKIN: You know, it is your

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2 time. Okay?

3 Q. I will ask you for the last time,
4 Mr. Vecchione. Do you have any recollection
5 as you sit here now of having listened to the
6 911 tape and concluded that Angel Santos' call
7 was not captured?

8 MR. LARKIN: All right. Form
9 objection.

10 You can answer the question.

11 A. As I sit here now my recollection
12 is the same as it was in 2006.

13 Q. Which is what?

14 A. What I just read to you: It is
15 possible that upon listening to the tape, I
16 concluded that the Angel Santos call had not
17 been captured.

18 Q. Did you inform defense counsel
19 that Angel Santos' call was not captured on
20 the tape?

21 MS. POLSTEIN: Objection.

22 MR. LARKIN: Objection. Did he
23 tell him in those words?

24 MR. RUDIN: In words or substance.

25 MR. LARKIN: Or did he provide

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2 other of the documents that reflected
3 that fact? I mean --

4 Q. Mr. Vecchione, did you inform
5 defense counsel, in words or substance, that
6 the 911 tape did not capture Angel Santos'
7 call?

8 A. I turned over --

9 MS. POLSTEIN: Objection.

10 MR. LARKIN: Objection.

11 Go ahead.

12 A. I turned over the 911 printout and
13 the Sprint, and the rest of my recollection is
14 what I just read to you.

15 Q. When did you reveal to the defense
16 the identity of Angel Santos as a witness?

17 A. I don't recall.

18 Q. Isn't it a fact that you didn't
19 identify him as a witness until just before
20 the trial?

21 MR. LARKIN: Objection.

22 MS. POLSTEIN: Objection.

23 A. I don't recall.

24 Q. Did you ever have a conversation
25 with defense counsel about the contents of the

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2 911 tape?

3 A. I don't recall.

4 Q. Did you ever ask defense counsel
5 to provide you with a blank cassette so you
6 could provide him with the 911 tape?

7 A. I don't recall, but my statement
8 is in the affirmation and nothing has changed
9 since 2006.

10 Q. Were you present when Angel Santos
11 testified at the trial?

12 A. Yes.

13 Q. Do you recall that Angel Santos
14 testified that he was on the phone with a 911
15 operator when he made an observation?

16 A. I recall Angel Santos testifying
17 that he was calling 911, yes.

18 Q. Do you recall that he actually
19 testified that he was on the phone with a 911
20 operator when he made an observation?

21 MR. LARKIN: Objection. Show him
22 the testimony.

23 MS. POLSTEIN: Objection.

24 MR. RUDIN: I'm asking for his
25 recollection.

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2 MR. LARKIN: No, no, show him the
3 testimony. No. We are not going to do
4 this. If you want to call the judge, we
5 can. But I don't want you asking him
6 about witness testimony without showing
7 him the transcripts. That isn't fair.

8 MR. RUDIN: He just testified he
9 went through the whole trial.

10 MR. LARKIN: Okay, 19 years ago.

11 MR. RUDIN: He just went through
12 the whole trial transcript.

13 19 years ago he sat through a
14 trial. Yeah, and the transcripts are
15 what, this thick: 2, 3 inches thick,
16 please.

17 MR. RUDIN: He said he read over
18 the trial testimony on Sunday.

19 MR. LARKIN: Right, okay, and it
20 is what, 2, 3 inches thick, Joel,
21 double-spaced.

22 MR. RUDIN: It is really not a
23 very difficult question.

24 If Mr. Vecchione cannot answer the
25 question because he doesn't recall, he

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2 can say he doesn't recall.

3 MR. LARKIN: No, if he can't
4 answer the question without seeing the
5 testimony, he can say that. And you can
6 either elect to show the testimony or
7 not. I mean, be fair to the witness.

8 MR. RUDIN: I'm entitled to his
9 present recollection.

10 MS. POLSTEIN: There was an entire
11 hearing on the semantics of this call,
12 exactly what you are saying. So given
13 that, I think it is unfair that -- the
14 question as posed.

15 Q. Mr. Vecchione, as you sit here now
16 do you have any recollection of Angel Santos
17 testifying that he was on the phone with a 911
18 operator when he made an observation.

19 MR. LARKIN: Form objection.

20 You can answer that.

21 A. I have a recollection of him
22 saying that he was calling 911, and I have a
23 recollection of a later question which may
24 have perhaps expanded on that but I don't have
25 a distinct recollection of what the answer is.

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2 Q. At the time that Angel Santos
3 testified at trial, were you aware that his
4 voice had not been captured on the 911 tape?

5 A. Yes. I turned over the 911
6 printout and the Sprint report.

7 Q. And do those documents indicate
8 that his call was not recorded?

9 A. They would have, yes.

10 Do I have a distinct recollection
11 as I sit here today? No, but they would have
12 indicated that his voice was not on there.

13 Q. And when did you turn over those
14 documents?

15 A. Before the trial started. I don't
16 have -- I know that there is a discovery
17 receipt somewhere, so you can read that as
18 well as I could. So I don't know when that
19 is; I don't recall.

20 Q. Do you ever have any recollection
21 of bringing to the attention of defense
22 counsel during the trial that Angel Santos's
23 call was not captured on the 911 tape?

24 A. I turned over the --

25 MR. LARKIN: Objection. Asked and

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2 answered six times.

3 Go ahead.

4 A. I turned over the 911 printout, I
5 turned over the Sprint report. Mr. Harrison,
6 as far as I knew, knew how to read English,
7 and chose during the course of the trial to
8 employ a defense that indicated that Mr.
9 Santos was, in fact, dialing the phone so that
10 he could see your client run past the window.
11 That was his defense. I turned over the 911
12 printout and the Sprint report. What he
13 wanted to do with it was up to him. I'm not
14 the defense attorney.

15 Q. Did you tell defense counsel
16 before or during Mr. Collins' trial, that the
17 witness Adrian Diaz had tried to evade
18 detective investigators from the DA's office
19 when they were looking for him in Puerto Rico?

20 MR. LARKIN: Objection to form.

21 A. What I turned over with regard to
22 Diaz is on the record.

23 Q. Now, when were you initially
24 assigned to handle the Jabbar Collins case?

25 A. Some time after the murder.

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2 Q. Was it before or after Mr. Collins
3 was arrested?

4 MR. LARKIN: Objection. He was
5 arrested twice I believe. Right?

6 A. My recollection is that within
7 days of the murder.

8 Q. Who assigned you to handle the
9 case?

10 A. District Attorney through Charles
11 Posner.

12 Q. Would you explain that.

13 A. Charles Posner told me that the
14 District Attorney is assigning me and him to
15 the trial of this case, if and when an arrest
16 was made.

17 Q. And what was Mr. Posner's position
18 at the office at that time?

19 A. I'm not entirely sure if he was a
20 deputy DA or an executive DA. I'm not sure,
21 but he was an executive in the office.

22 Q. Who had a higher position at that
23 time, you or him?

24 A. He did.

25 Q. Was there any other case prior to

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2 this that was directly assigned to you by the
3 District Attorney?

4 MR. LARKIN: Objection to form.

5 A. In the same manner?

6 Q. Yes.

7 A. Through Posner?

8 Q. Yes.

9 A. One that can I think of, yes.

10 Q. Which case was that?

11 A. It involved the death of a woman
12 in Crown Heights. I believe the name of the
13 defendant was Romaine LaFond.

14 Q. Was there any other homicide case
15 that Mr. Hynes assigned for you specifically
16 to handle besides the LaFond case and the
17 Collins case, prior to the Collins case?

18 MR. LARKIN: Objection to form.

19 A. I don't recall.

20 Q. What was your understanding of Mr.
21 Posner's responsibilities at the DA's office
22 at the time that the Collins case was assigned
23 to you?

24 A. I don't recall what his
25 responsibilities were.

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2 Q. Was anyone else assigned to the
3 case?

4 A. When?

5 Q. At any point, besides you and Mr.
6 Posner?

7 A. To the trial?

8 Q. We can start with the trial.

9 A. Stacey Frascogna was assigned as
10 well.

11 Q. Do you know when she was assigned
12 to work on the case, in relation to the trial?

13 A. My recollection is that she was
14 the one who put the case into the grand jury.
15 I don't recall when she was assigned to the
16 actual trial.

17 Q. Now, are you aware that Mr.
18 Collins was arrested on two occasions?

19 A. As I sit here now? I'm not really
20 aware of that, no.

21 Q. You are aware that he was arrested
22 immediately before he was arraigned, right?

23 A. Yes, I am. That would be the
24 practice.

25 Q. Are you aware of whether he was

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2 arrested on any occasion before he was
3 arraigned?

4 A. As I sit here today, I don't have
5 a recollection of that.

6 Q. Well, while you were handling the
7 case were you aware that Mr. Collins at some
8 point was arrested and then released?

9 A. What do you mean while I was
10 handling the case?

11 Q. Following the assignment of the
12 case to you, did you become aware that Mr.
13 Collins had been arrested and released?

14 A. No recollection --

15 MR. LARKIN: Just note the form
16 objection.

17 Sorry. Go ahead.

18 A. I have no recollection of that.

19 Q. Do you know who made the decision
20 to arrest Mr. Collins immediately before he
21 was arraigned?

22 A. The police department? Is that
23 what you are asking me about?

24 Q. I'm asking you your knowledge of
25 who made the decision to arrest Mr. Collins.

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2 MR. LARKIN: Just note a form
3 objection.

4 A. It's poor form. I don't really
5 know what you mean.

6 Detectives were assigned to the
7 case.

8 Q. Were you aware that a decision was
9 made to arrest Mr. Collins?

10 MS. POLSTEIN: Objection.

11 MR. LARKIN: Objection.

12 MR. RUDIN: Withdrawn.

13 Q. Were you present for any meeting
14 at the Brooklyn DA's office where a discussion
15 was had about whether Mr. Collins should be
16 arrested?

17 A. I don't recall any meeting.

18 Q. Did any police detective ask you
19 personally for your opinion about whether or
20 not there was sufficient evidence to arrest
21 Mr. Collins?

22 A. I have no recollection of that.

23 Q. Do you know whether or not anyone
24 from the police department asked any other
25 assistant DA prior to the arrest and

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2 arraignment of Mr. Collins, whether or not
3 there was sufficient evidence to arrest him?

4 MR. LARKIN: Objection:
5 foundation. Go ahead.

6 A. Now I do.

7 Q. Well, at the time that you were
8 handling Mr. Collins' prosecution through the
9 verdict, did you learn whether or not any
10 assistant DA had been asked by any detective
11 whether there was a sufficient basis to arrest
12 Mr. Collins?

13 MR. LARKIN: Objection.

14 MS. POLSTEIN: Objection.

15 A. I know it now. Back then my
16 recollection is that it would have been, if
17 anyone, Jon Besunder. But I don't have a
18 specific recollection of that event happening.

19 Q. And what do you know now?

20 A. John Besunder was the one who
21 authorized the arrest.

22 Q. And how did you learn that?

23 A. It is on some DD-5 somewhere or
24 some, that I recall seeing. Or some other
25 document. It might not have been a DD-5. It

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2 might have been an internal record that I was
3 shown. Now that I think about it, it might
4 have been a homicide scratch report as we used
5 to call it. It was something of that nature.
6 I think that's what it was. Not a DD-5.

7 Q. Have you ever discussed with Mr.
8 Besunder his involvement in approving the
9 arrest of Mr. Collins?

10 MR. LARKIN: Objection. At any
11 time?

12 A. At any time?

13 Q. At any time, yeah.

14 A. I don't -- you know, I don't
15 recall.

16 Q. Do you have any understanding of
17 why, if the case was assigned to you for
18 trial, it was Mr. Besunder who approved the
19 arrest?

20 A. It's what --

21 MR. LARKIN: Objection.

22 A. It's what John Besunder did. That
23 was one of his jobs.

24 Q. At any point before Mr. Collins
25 was arraigned, did any member of the police

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2 department consult with you about any issue in
3 their investigation of the Pollack homicide?

4 A. I don't recall.

5 MR. LARKIN: Form objection.

6 Q. Before Mr. Collins was arraigned
7 were you aware of the existence of an
8 individual named Edwin Oliva?

9 A. I don't recall.

10 Q. Do you recall anyone ever speaking
11 to you about the handling of Mr. Oliva's own
12 robbery case?

13 A. No, I don't recall.

14 Q. Did you discuss with Ms. Frascogna
15 or any other assistant DA, what evidence
16 should be presented to the grand jury in
17 connection with the prosecution of Mr.
18 Collins?

19 A. I don't recall it.

20 Q. When, if at all, did you first
21 review the police DD-5s in connection with the
22 prosecution of Mr. Collins?

23 MR. LARKIN: Objection to the
24 form.

25 MS. POLSTEIN: Objection as to

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2 form.

3 A. Okay, I don't recall.

4 Q. At the time that you were assigned
5 to the case, did you review the police
6 reports?

7 A. At any time during the case?

8 Q. Yes.

9 MR. LARKIN: Objection to form.

10 A. My practice would certainly have
11 been that, but I don't recall specifically
12 when.

13 Q. Did there come a time when you had
14 a discussion with anyone else in your office
15 about assembling the case for trial?

16 MR. LARKIN: Form objection.

17 A. Don't recall.

18 Q. Was there a time when you began to
19 think about how you were going to prove the
20 case at trial?

21 MR. LARKIN: Objection.

22 A. Specifically, I don't recall that,
23 but --

24 Q. You were assigned to try the case?

25 A. Yes, I don't go into a trial

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2 without giving it thought.

3 Q. So when did you first begin to
4 think about preparing for trial?

5 A. I don't recall.

6 MS. POLSTEIN: Objection.

7 MR. LARKIN: Objection.

8 A. I don't recall.

9 Q. Well, when did you begin to
10 prepare for trial?

11 A. I don't recall that, either.

12 Q. Do you recall any point where you
13 began to think about who the witnesses would
14 be at the actual trial?

15 MR. LARKIN: Objection.

16 A. Do I recall when that was?

17 Q. Yes.

18 A. I don't recall that.

19 Q. Well, was there any point where
20 you began to talk to other individuals in the
21 office about -- withdrawn.

22 Was there any point where you had
23 a discussion with any individuals in the
24 office about obtaining the testimony of Edwin
25 Oliva?

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2 A. I don't have any recollection.

3 MR. LARKIN: Objection.

4 A. I don't recall.

5 Q. When was the first time that you
6 ever spoke with Edwin Oliva?

7 A. The night before we put him on the
8 stand at that mini-Wade hearing or Rodriguez
9 hearing, I spoke to him the night before so
10 that would be March 6 of 1995.

11 Q. Before March 6 of 1995 were you
12 aware of any efforts by anyone at the District
13 Attorney's office to speak with Mr. Oliva
14 about his possible trial testimony?

15 A. Yes.

16 Q. When did you first become aware of
17 such efforts?

18 A. I don't recall when I became aware
19 of it, but there were efforts.

20 Q. Well, what is your recollection of
21 what those efforts were?

22 A. My recollection is that some sort
23 of notifications were sent out or some kind of
24 communications, I'm not sure exactly what they
25 were, that he was unresponsive to or not

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2 responsive, and those were the efforts.

3 Q. Were you aware that a Damiani
4 order was submitted to the court on or about
5 January 26, 1995 regarding Mr. Oliva?

6 A. Well, you just showed me one.

7 Q. So were you aware of it at the
8 time?

9 A. I don't have any recollection of
10 that.

11 Q. Did anyone tell you that a Damiani
12 order had been assigned?

13 A. I have no recollection.

14 MR. LARKIN: Objection.

15 MS. POLSTEIN: Objection.

16 A. I don't recall. I'm sorry, say it
17 again. What was that? That had been signed?

18 Q. Did anyone tell you that a Damiani
19 order had been signed?

20 A. I don't recall.

21 Q. Did anyone tell you in or about
22 January of 1995, that a Damiani order had been
23 served on any institution where Mr. Oliva was
24 incarcerated or was assigned to?

25 A. Don't recall.

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2 MR. LARKIN: Objection to form.

3 Sorry.

4 Q. Did anyone tell you that Mr. Oliva
5 did or did not come to the DA's office in
6 response to the Damiani order?

7 MR. LARKIN: Objection.

8 Q. The one of January 26, 1995.

9 MR. LARKIN: Objection.

10 A. I don't recall.

11 Q. On March 6, 1995 were you aware of
12 any communication that had occurred between
13 Mr. Oliva and any member of the District
14 Attorney's office about the subject of the
15 Jabbar Collins case?

16 A. I don't recall any.

17 Q. Mr. Vecchione, I'm going to show
18 you what's been previously marked as
19 Plaintiff's Exhibit 138.

20 A. Okay.

21 Q. Have you ever seen either of these
22 pages before?

23 A. Just give me a minute.

24 I saw them during prep.

25 Q. Before that?

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2 A. I don't recall seeing them.

3 Q. The first page is a fax cover
4 sheet. Is that correct?

5 A. That's what it says, fax cover
6 sheet.

7 Q. And then the second page is a
8 subpoena to the pension personnel office for
9 information regarding Detective Vincent
10 Gericitano?

11 A. That's what it appears to be.

12 Q. And it is issued over your name,
13 Michael Vecchione?

14 A. Well, there is a -- my name is
15 affixed to the bottom.

16 Q. Did you sign that document?

17 A. I did not. That's not my
18 handwriting.

19 Q. Did you authorize anyone to
20 subpoena information from the pension or
21 personnel office regarding Detective Vincent
22 Gericitano?

23 A. I have no recollection of that.

24 Q. Did any paralegal at your office
25 have your authority to subpoena documents

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2 relating to the Jabbar Collins case without
3 your knowledge?

4 MR. LARKIN: Objection to form.

5 A. I don't have any recollection of
6 that.

7 Q. Well, did you give anyone that
8 authority?

9 A. I don't recall. Subpoena without
10 my knowledge?

11 Q. Yes.

12 A. Well, that would not be possible
13 because I would have to sign the subpoena.

14 Q. Well, you didn't sign this
15 subpoena, did you?

16 MR. LARKIN: Objection.

17 A. Well, okay, I did not.

18 Q. Did you authorize anyone to obtain
19 any Damiani order in the Jabbar Collins case
20 without your knowledge?

21 A. Don't recall.

22 MR. LARKIN: Objection. Authorize
23 somebody to do something without his
24 knowledge? In other words, do it but
25 don't tell me about it?

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2 MR. RUDIN: Yeah, exactly.

3 MR. LARKIN: Okay, objection to
4 the form.

5 A. Yeah, I don't really understand
6 the form of that question.

7 Q. Did you give anyone at the DA's
8 office authority to prepare and file a Damiani
9 order without first asking your approval to do
10 so?

11 A. I don't recall any such authority.

12 Q. Did you provide anyone authority
13 at the DA's office to apply for a material
14 witness order in connection with the Jabbar
15 Collins case without first asking your
16 permission to do so?

17 A. I don't recall any such --

18 MR. LARKIN: Form objection.

19 A. I don't recall any such authority.

20 Q. Did you ever give authority to
21 anyone prior to March of 1995 at the Brooklyn
22 DA's office to apply for a Damiani order or a
23 material witness order in a case that you were
24 handling without first getting your
25 permission?

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2 MR. LARKIN: Objection to form.

3 A. I don't recall.

4 Q. I'm sorry?

5 A. I don't recall specifically, but I
6 don't recall any such authority.

7 Q. Were you aware during the course
8 of the preparation for the Jabbar Collins
9 trial that anyone at the District Attorney's
10 office was trying to obtain contact
11 information for Detective Vincent Gericitano?

12 A. Don't recall.

13 Q. Were you aware during the
14 preparation for Mr. Collins' trial whether or
15 not anyone at the District Attorney's office
16 was trying to speak to Mr. Gericitano about
17 the Collins case?

18 A. Don't recall.

19 Here you go. You got a bunch of
20 documents here. Do you want these all back?

21 MR. RUDIN: Sure.

22 Q. Did you have any knowledge prior
23 to March 6 of 1995 that Mr. Oliva was not
24 being cooperative with the District Attorney's
25 office in connection with the Collins case?

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2 A. I'm sorry, I missed the dates.
3 Say it again.

4 Q. Prior to March 6 of 1995 did you
5 have any knowledge that Mr. Oliva was not
6 being cooperative with your office in
7 connection with the Collins case?

8 A. I thought I answered that before.
9 My recollection is that there were
10 some sort of notices sent out or some kind of
11 attempts to reach him and that he was not
12 responding or had not responded.

13 Q. Did you discuss with anyone at
14 your office prior to March 6 of 1995 of what
15 steps might be taken to secure Mr. Oliva's
16 cooperation?

17 MR. LARKIN: Form objection.

18 A. I don't have any specific
19 recollection of that, no.

20 Q. Do you have any recollection of
21 any kind?

22 A. My recollection is --

23 MR. LARKIN: Objection to form.

24 MS. POLSTEIN: Objection.

25 MR. LARKIN: Yeah, objection to

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2 the form.

3 Sorry. Go ahead.

4 A. My recollection on this is that at
5 some point someone told me or I heard that he
6 had been on some work release program, and I
7 recall someone saying that they were going to
8 check to see whether or not that required him
9 to obey, you know, a notification from a law
10 enforcement authority. And I recall the
11 answer being yes. And that was it.

12 Q. You recall the answer being yes,
13 he was required to obey a notification?

14 A. Yeah.

15 Q. Were you aware of any notification
16 that had been sent out by a law enforcement
17 authority to Mr. Oliva?

18 MR. LARKIN: Objection.

19 A. I don't have any --

20 Q. In connection with this case?

21 MR. LARKIN: Objection.

22 I'm sorry.

23 A. I don't have any recollection of
24 that. I just know what I just told you.
25 That's what I know.

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2 Q. And who provided you with that
3 information?

4 A. I don't recall who it was. I just
5 remember hearing it.

6 Q. Do you know whether or not anyone
7 at the District Attorney's office communicated
8 with any state or local agency, the fact that
9 Mr. Oliva was not being cooperative with your
10 office?

11 MR. LARKIN: Form objection.

12 A. I know what the result was. I
13 don't know who that was. I know someone must
14 have because ultimately Oliva was in my
15 office.

16 Q. Well, what knowledge do you have,
17 if any, about what led Mr. Oliva to be in your
18 office?

19 A. The knowledge I have is that
20 someone contacted work release, told them that
21 we needed to speak to him, and then at some
22 time after that he was in my office on March
23 6.

24 Q. And that's all the knowledge you
25 have?

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2 A. That's all the knowledge I have.

3 Q. Do you know who in your office
4 contacted the agency that was involved in his
5 work release?

6 A. No.

7 Q. When he was back in your office,
8 were you aware that he was at that point a
9 state prisoner?

10 MR. LARKIN: Just note a form
11 objection.

12 You can answer.

13 A. I learned that at some point after
14 whatever inquiry was made, work release or
15 whoever oversees it, brought him in and
16 terminated the work release or temporarily
17 terminated it and sent him into state prison.
18 I did become aware of that, yes.

19 Q. Who told you that?

20 A. I don't recall who it was.

21 Q. And were you aware whether there
22 was any reason for the recision of his work
23 release besides his --

24 A. I'm sorry, Mr. Rudin, I missed the
25 first part of the question.

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2 Q. Were you aware whether there was
3 any reason for the rescission of his work
4 release besides the communication from the
5 DA's office concerning his prior failure to
6 cooperate?

7 MR. LARKIN: Form objection.

8 A. Well, I don't know what the reason
9 was. I just know that work release brought
10 him in and put him into prison, so I don't
11 know what the answer is.

12 Q. Were you aware of any other case
13 in which a witness was not cooperative with
14 your office and who was on work release and
15 then his work release was rescinded for that
16 reason?

17 MR. LARKIN: Objection. As of
18 1995 or today?

19 A. Up until 1995?

20 Q. Yes.

21 A. I don't recall.

22 MR. LARKIN: Objection to the
23 form.

24 Sorry.

25 Q. Well, were you aware of any kind

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2 of routine practice at the District Attorney's
3 office to contact a state or city agency with
4 responsibility for an individual who was on
5 probation or parole, or work release, for the
6 purpose of causing that individual to be taken
7 into custody?

8 MR. LARKIN: I'm sorry, can I get
9 it read back. I apologize.

10 MS. POLSTEIN: Objection.

11 (Record read.)

12 MR. LARKIN: All right, form
13 objection.

14 MS. POLSTEIN: I mean, work
15 release is custody, is my objection. I
16 believe.

17 Q. Do you understand the question?

18 A. I do understand the question.

19 Q. All right, you may answer, please.

20 A. I don't know of any such practice.

21 I recall being entirely surprised when I
22 learned that they had put him back into
23 prison.

24 Q. When did you learn that?

25 A. At some time prior to the point

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2 that he came in on March 6th.

3 Q. Who told you that he had been put
4 back in prison?

5 A. I don't have any recollection of
6 that.

7 Q. When you were told that he had
8 been put back in prison, did you have any
9 conversation with anyone at your office
10 concerning how to arrange his production from
11 prison to your office?

12 MR. LARKIN: Objection.

13 A. I don't recall any.

14 Q. I'm sorry?

15 A. I don't recall any.

16 MR. RUDIN: May I have this
17 document marked.

18 (Plaintiff's Exhibit 154,
19 handwritten document bearing Bates
20 Nos. NYC40969-70 marked for
21 identification, as of this date.)

22 Q. Mr. Vecchione, I'm going to ask
23 you about this later. It is actually not the
24 right document that I wanted to ask you about.
25 You are welcome to read it, but I'm not going

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2 to ask you a question about that now.

3 THE WITNESS: Okay. Here you go.

4 MR. RUDIN: Why don't we have this
5 document marked.

6 (Plaintiff's Exhibit 155,
7 two-page handwritten notes marked
8 for identification, as of this
9 date.)

10 Q. Mr. Vecchione, I would like to ask
11 you --

12 A. Yes, go ahead.

13 Q. -- questions about a couple of
14 things on the first page of this document.

15 A. Go ahead.

16 Q. Do you recall being interviewed by
17 a woman named Marie Claude Wrenn in connection
18 with Mr. Collins' 440 motion?

19 A. I have no recollection of that.

20 Q. Do you have a recollection of
21 being interviewed by anyone in connection with
22 Mr. Collins' 440 motion?

23 A. It would have been, if anyone, it
24 would have been Monique Farrell, but I don't
25 have any specific recollection.

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2 Q. Did you ever tell anybody that
3 detective investigators would have let parole
4 officers know, he, meaning Mr. Oliva, was
5 violating?

6 MR. LARKIN: Objection to the
7 form.

8 A. I don't see where that refers to
9 Mr. Oliva.

10 Are you asking me to look at
11 what's on this document?

12 Q. Well, all right --

13 A. It doesn't say Mr. Oliva, so I
14 don't know who that is referring to.

15 Q. Did you ever make a statement to
16 anyone to the effect of that detective
17 investigators were involved in letting a
18 parole officer know that Mr. Oliva was in some
19 way violating the terms of his release?

20 MR. LARKIN: Form objection.

21 A. I don't believe that refers to Mr.
22 Oliva. That looks to me as if it would be Mr.
23 Diaz, but the answer to your question is no.
24 I don't recall any such conversation.

25 Q. Well, do you recall any

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2 conversation in which you described the role
3 that detective investigators would have had
4 with in connection with Mr. Diaz?

5 MR. LARKIN: Objection to form.

6 A. I don't have any recollection of
7 that, no.

8 Q. Do you see that further down on
9 that page that somebody wrote a reference to
10 work release, would have turned it over?

11 A. Well, I don't know what it says.
12 I can't read the first line of that, so I
13 don't know, I'm not going to just answer your
14 question just on three words. I don't know
15 what that says.

16 Q. All right. Can you read the last
17 line, "would have talked with him where he
18 worked."

19 MR. LARKIN: Just objection. Is
20 this your handwriting, Mr. Vecchione?

21 THE WITNESS: No, it is not.

22 MR. LARKIN: Okay.

23 A. "Would have" -- I see that, yes.

24 Q. Does that refresh your
25 recollection that you had a conversation with

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2 somebody in or about 2006 concerning speaking
3 to Oliva where he worked?

4 MR. LARKIN: Objection: form.

5 A. No, it doesn't even appear to be
6 attributed to me, so I don't recall any such
7 conversation.

8 Q. Very well.

9 A. If there was one.

10 Q. Turning back to 154.

11 A. Okay.

12 Q. Is that your handwriting?

13 A. It appears to be my handwriting,
14 yes.

15 Q. Thank you.

16 A. Okay. Do you want this back?

17 MR. RUDIN: Yes.

18 Q. Now, do you recall who was present
19 when Mr. Oliva was in your office on March 6
20 of 1995?

21 A. I don't recall.

22 Q. Do you recall how long you met
23 with him on that occasion?

24 A. I don't recall.

25 Q. Did anyone take notes?

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2 A. I don't recall.

3 Q. Did anyone record the meeting?

4 A. I don't recall.

5 Q. Did Mr. Oliva at any point during
6 that meeting say to you that he did not wish
7 to testify?

8 A. I don't recall.

9 Q. Did he say to you at any point in
10 that meeting that his written statement to
11 police was untrue?

12 A. I'm sorry, say it again.

13 Q. Did he say to you at any point
14 during that meeting that his written statement
15 to police was untrue?

16 A. If he would have, I would have
17 turned that over.

18 Q. Did he say to you at any point in
19 that meeting that his written statement to
20 police had somehow been coerced or tricked out
21 of him?

22 A. If he would have, I would have
23 turned that over so my answer is no.

24 Q. Did he tell you at any point
25 during that meeting that at the time he signed

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2 the statement he was going through drug
3 withdrawal?

4 A. If I would have -- if he did, I
5 would have turned that over. The answer is
6 no.

7 Q. Did Mr. Oliva during that meeting
8 ask you or anyone who was present, why his
9 work release had been rescinded?

10 A. I don't recall.

11 Q. Did he discuss with you his desire
12 to be restored to work release?

13 A. You know, I don't recall. I don't
14 recall that. Whatever -- I don't recall
15 because I don't remember what was said on the
16 record. I don't recall that. I don't recall.

17 Q. Well, did he ask you or anyone why
18 he had been taken off work release?

19 A. I don't recall. I assume you mean
20 in my presence?

21 Q. Yes.

22 A. I don't recall.

23 Q. Did you discuss with Mr. Oliva at
24 that meeting on March 6, why he had not
25 cooperated with your office previously?

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2 A. Don't remember. Don't recall.

3 Q. Did you discuss with him at that
4 meeting on March 6 whether he had ever been
5 present at your office on any prior occasion?

6 A. I don't recall but I know he
7 didn't. I don't know of any time that he was.
8 I don't recall having that discussion. Why
9 would I?

10 Q. Well, before you put Mr. Oliva on
11 the witness stand at the trial --

12 A. I didn't put him on. Posner put
13 him on.

14 Q. Before Mr. Posner put Mr. Oliva on
15 the witness stand --

16 A. Yes.

17 Q. -- did you ask anyone whether Mr.
18 Oliva had been in your office on any prior
19 occasion?

20 A. I don't recall.

21 MR. LARKIN: Objection to form.

22 Q. In connection with the Collins
23 case.

24 A. I don't recall doing that.

25 Q. At the time that Mr. Oliva

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2 testified at the trial of Mr. Collins, were
3 you aware that Mr. Oliva had been arrested for
4 robbery shortly before he made a written
5 statement to police about Mr. Collins?

6 A. I would have known that. Do I
7 have a specific recollection as we sit here
8 today? No. But that would have been my
9 practice because I would have read the file.

10 Q. Did you obtain your office's file
11 in connection with the prosecution of Mr.
12 Oliva for that robbery before he testified?

13 A. I don't recall if I did. I would
14 have.

15 Q. I'm sorry?

16 A. I don't recall, but I mean it
17 would be my practice to do that, yes. But I
18 don't recall it specifically.

19 Q. Did you discuss doing so with
20 anyone else in your office?

21 A. I don't recall.

22 Q. Did you have any understanding as
23 of March 7th, 1995 whether or not you as a
24 prosecutor had any obligation to correct false
25 or misleading testimony if it was given by a

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2 prosecution witness?

3 A. Not only do I have that knowledge
4 as a prosecutor, I had it as a defense
5 attorney, as well.

6 MR. RUDIN: Can we go off the
7 record for a minute.

8 MR. LARKIN: Sure.

9 THE VIDEOGRAPHER: Now going off
10 the record approximately 12:32 p.m.

11 (Recess taken.)

12 THE VIDEOGRAPHER: We're now going
13 back on the record approximately 12:46
14 p.m.

15 BY MR. RUDIN:

16 Q. Mr. Vecchione?

17 A. Yes.

18 Q. I don't remember now whether you
19 said this or your attorney said this, but
20 there was a reference a little bit earlier to
21 a gap in the pagination of the trial
22 transcript. Do you recall that that was
23 brought up?

24 A. Mr. Larkin brought it up.

25 Q. You said that you reviewed the

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2 trial transcript last Sunday?

3 A. I did.

4 Q. And when you reviewed the trial
5 transcript, did you see whether or not there
6 was a gap in the pagination?

7 A. Yes, I saw that.

8 Q. And as you sit here now, do you
9 believe that there were proceedings that
10 occurred at the trial that were not in the
11 trial transcript that you reviewed?

12 A. Yes.

13 Q. What of the trial proceedings that
14 you recall that are missing from the trial
15 transcript?

16 A. I don't recall. That's what,
17 that's what I'm saying. I don't recall. But
18 I saw the gap.

19 Q. Have you ever participated in a
20 trial where a court reporter was preparing
21 what lawyers call daily copy?

22 A. Yes.

23 Q. What is your understanding of what
24 daily copy is?

25 A. That by the next morning we would

1 M. F. VECCHIONE

2 have a transcript on our counsel table, both
3 defense attorneys, for the most part, and
4 district attorneys.

5 Q. And is it your experience that
6 when lawyers order daily copy, that sometimes
7 more than one court reporter is present at the
8 trial to record the proceedings?

9 A. Yes.

10 Q. And that sometimes they alternate
11 being present?

12 A. Yes.

13 Q. And sometimes while one is in
14 court taking down notes of the testimony,
15 another one is in his or her office preparing
16 a transcript of what's already occurred?

17 MR. LARKIN: Well, objection to
18 the form.

19 I'm sorry.

20 A. What I can tell you is that I know
21 there is one in the courtroom and there is
22 another not in the courtroom.

23 Q. And how many trials have you
24 participated in as counsel of record in your
25 career?

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2 A. I can't count.

3 Q. Well, would it be fair to say
4 dozens?

5 A. Many dozens.

6 Q. Many dozens. And have you ever
7 participated in any other trial proceeding
8 where, when you looked at the trial transcript
9 after the trial, you noticed that there were
10 gaps in the pagination?

11 A. I can't recall.

12 Q. Are you familiar with the practice
13 of court reporters to leave gaps in pagination
14 when they are alternating with another court
15 reporter?

16 A. I'm not familiar with that.

17 Q. Is there any information that you
18 recall disclosing to defense counsel during
19 the Collins trial that you believe occurred
20 during a portion of the trial that is not
21 transcribed?

22 MR. LARKIN: Form objection.

23 A. I don't have recollection of that.

24 Q. Now I would like to show you
25 Plaintiffs' 141. That's your affirmation in

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2 2006.

3 A. Yes.

4 Q. Would you turn to paragraph 7.

5 And read the last sentence of paragraph 7 out
6 loud.

7 A. Well, let me read the whole
8 sentence.

9 Q. That's fine.

10 A. "No deals were made with witnesses
11 that were not disclosed by me to the court and
12 the defense. No witness ever recanted a prior
13 statement or grand jury testimony. No witness
14 had to be threatened or forced to testify."

15 Q. All right. Focusing for the
16 moment on the last sentence.

17 A. Yes.

18 Q. "No witness had to be threatened
19 or forced to testify."

20 A. Yes.

21 Q. Did you believe that to be a
22 truthful statement when you signed your
23 affirmation?

24 A. It is truthful. Yes, I believed
25 it to be true and it is truthful, yes.

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2 Q. So as you testify here today, you
3 continue to contend that that is a truthful
4 statement?

5 A. Yes.

6 Q. Now, I asked you some questions
7 earlier about a material witness order that
8 was signed by Justice Egitto with respect to
9 Angel Santos.

10 A. Yes.

11 Q. Let me show you that again,
12 Plaintiff's 91.

13 A. Okay. Okay.

14 Q. Now, would you turn to the fourth
15 page which is the beginning of the affirmation
16 that is in your name.

17 A. Yes.

18 Q. Do you see in the first paragraph
19 there is a reference to efforts that were made
20 on February 21st, 22nd and 23rd by detectives
21 from the DA's office to contact Mr. Santos?

22 A. I see that.

23 Q. Were you aware of those efforts at
24 the time they were being made?

25 A. Well, they are in my affirmation,

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2 so, yes.

3 Q. Who made those efforts, which
4 individuals?

5 A. I don't have a recollection of
6 that.

7 Q. Well, this information that's in
8 your affirmation, did you direct anyone to put
9 that in your affirmation?

10 A. No, not that I can recall.

11 Q. Well, do you have any
12 understanding of how that information wound up
13 in your affirmation that you didn't sign?

14 MR. LARKIN: Just a form
15 objection.

16 A. I'm sorry, do I have what?

17 Q. Any recollection of how the
18 information that I just asked you about,
19 February 21st, 22nd and 23rd, ended up in this
20 affirmation that was signed by someone else on
21 your behalf?

22 A. I don't have a specific
23 recollection of how it did.

24 Q. Would that information have ended
25 up in this affirmation if you hadn't asked

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2 anyone to put it there?

3 MR. LARKIN: Objection: form.

4 A. Unlikely.

5 Q. Now, it says here that on February
6 23rd, 1995, "Detectives Bondor and Maher
7 located Mr. Santos and brought him to the
8 District Attorney's office where Mr. Santos
9 articulated to the detectives, as well as
10 Michael Vecchione, that he would not testify
11 at trial."

12 Did I read that correctly?

13 A. You did.

14 Q. Do you know where Detectives
15 Bondor and Maher located Mr. Santos?

16 A. I don't have a recollection of
17 that.

18 Q. Do you know how they were able to
19 bring him to the DA's office?

20 A. I wasn't with them so I don't
21 know.

22 Q. Well, do you know whether or not
23 Mr. Santos came voluntarily or was compelled
24 to come to the office?

25 MR. LARKIN: Form objection.

1 M. F. VECCHIONE

2 A. We had no ability to compel him at
3 that point, so it had to be voluntarily.

4 Q. Well, do you know that because
5 someone told you that, or are you assuming
6 that?

7 MR. LARKIN: Objection to the
8 form.

9 A. Well, the warrant was signed
10 later, so. He came voluntarily.

11 Q. Now, if you look in the middle of
12 the second page of that affirmation.

13 A. The middle of the second page?

14 Q. Yes.

15 A. Okay, hold on. Hold on.

16 Q. Later on in the page I was just
17 reading from. It says --

18 A. I'm sorry, you said the second
19 page of the exhibit or the second page of the
20 affirmation?

21 Q. Let me just to be clear. It is
22 page 2109 on the Bates stamp on the bottom.

23 A. Okay, go ahead.

24 Q. You see that in the middle of that
25 page there is a statement: Any further

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2 service or process upon this witness will be
3 futile, that the past failure of Angel Santos
4 to respond voluntarily to subpoena
5 demonstrates that he will not respond to an
6 order compelling his appearance to proceedings
7 adjudicating a material witness.

8 A. I see that.

9 Q. What efforts were made prior to
10 February 3rd, 1995 to subpoena Mr. Santos?

11 A. I don't have any recollection of
12 that.

13 Q. Was a subpoena in fact served upon
14 him on or before February 25th --

15 A. I don't --

16 Q. February 23rd?

17 MR. LARKIN: Objection to form.

18 A. I don't have a recollection of
19 that.

20 Q. Would it have been proper to serve
21 a subpoena on him on or before February 23rd,
22 1995?

23 MR. LARKIN: Objection to form.

24 A. Would it have been proper? Under
25 certain circumstances, of course it would.

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2 Q. Well, you testified earlier that
3 the trial began on March 7th. Right?

4 A. Ah-hah. Yes, I'm sorry, yes.

5 Q. So as of February 23rd, 1995, what
6 court proceeding might Mr. Santos have been
7 required to attend by subpoena?

8 MR. LARKIN: Objection to the
9 form.

10 A. I didn't say court proceeding.
11 You asked me if there would be any reason to
12 subpoena him. Sure, there would be. There
13 was the grand jury presentation so a subpoena
14 would comply for that.

15 Q. Well, had Mr. Santos refused to
16 comply with any grand jury subpoena?

17 A. I don't have any recollection of
18 that. I didn't put the case into the grand
19 jury and I wasn't supervising it at that time.

20 Q. Well, this statement is in an
21 affirmation that contains your name.

22 A. Yes.

23 Q. Over your signature, right?

24 A. Yes, it does.

25 Well, not my signature, so.

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2 Q. Someone else signed this for you?

3 A. Yes.

4 Q. And it was submitted to the court
5 as a basis for a material witness warrant?

6 A. Well, it appears to have been,
7 yes.

8 Q. And you were present when it was
9 considered by the judge?

10 A. I don't recall being present when
11 this was considered by the judge.

12 Q. Well, were you present at any
13 point when Mr. Santos was in court to answer
14 the material witness warrant?

15 A. We were in Judge Egitto's
16 chambers. Yes, I was there.

17 Q. And the result of that process was
18 that Mr. Santos was committed to jail?

19 A. He was declared a material witness
20 and then remanded to civil jail, yes.

21 Q. And that was based upon an
22 affirmation that had been submitted to Justice
23 Egitto containing certain information about
24 Mr. Santos?

25 A. Well, that's what the material

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2 witness order says, the first page, yes.

3 Q. So at the time that Justice Egitto
4 declared Mr. Santos to be a material witness
5 and remanded him to jail, did you know whether
6 or not his failure to comply with the subpoena
7 had been a grand jury subpoena or some other
8 subpoena?

9 A. I don't --

10 MR. LARKIN: Objection to the
11 form.

12 I'm sorry.

13 A. As I sit here today, I don't have
14 any recollection of that.

15 Q. Was Mr. Santos served with a
16 subpoena directing him to appear at the
17 District Attorney's office?

18 MR. LARKIN: Objection.

19 A. Not to my knowledge.

20 Q. Did the District Attorney's office
21 have a practice as of February of 1995 to
22 subpoena witnesses to appear at their office?

23 A. Not to my knowledge. That would
24 be illegal.

25 Q. I'm sorry?

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2 A. You didn't hear the end of my
3 answer?

4 Q. We were speaking at the same time,
5 so --

6 A. It would be illegal.

7 Q. Why would it be --

8 A. The District Attorney doesn't have
9 subpoena power.

10 Q. Have you ever authorized anyone in
11 your office to serve a subpoena on a witness
12 for the purpose of causing that witness to
13 appear at your office?

14 A. No.

15 Q. Were you aware in March of 1995
16 whether or not there was anyone at the
17 District Attorney's office who was issuing
18 subpoenas to cause witnesses to appear at the
19 District Attorney's office?

20 A. Anyone in the district --

21 Q. Yes.

22 MR. LARKIN: Objection to form.

23 A. I have no recollection of that.

24 Q. Well, were you aware whether or
25 not Eliza Noonan had that practice?

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2 A. No.

3 Q. Were you aware whether or not
4 anyone at the office had that as a practice?

5 A. No.

6 Q. When Mr. Santos was at your office
7 on February 23rd, 1995, was he in handcuffs?

8 A. I don't recall him being in
9 handcuffs.

10 Q. Well, do you recall him not being
11 in handcuffs?

12 MS. POLSTEIN: Objection.

13 MR. LARKIN: Objection to form.

14 A. I don't recall -- Mr. Santos was
15 in my office for a period of time. I don't
16 recall him not being in handcuffs, nor do I
17 recall him being in handcuffs.

18 Q. All right. And for what period of
19 time was he in your office?

20 A. I don't recall how long.

21 Q. Was he in your office before or
22 after you met with Justice Egitto?

23 A. Before.

24 Q. And what happened when he was in
25 your office?

1 M. F. VECCHIONE

2 A. The best recollection I have is
3 that he expressed his unwillingness to testify
4 because he was frightened, his family was
5 frightened and he refused to agree to be
6 amenable to process and come to court to
7 testify.

8 Q. Did he tell you during that
9 conversation why he was frightened?

10 A. Yes.

11 Q. What did he say?

12 A. Your client and members -- not
13 your client specifically because he was in
14 jail, but members of his family and people out
15 on the street had put out the word that if
16 anybody testified against Collins, that there
17 would be trouble, or words to that effect.

18 Q. And did he tell you who told him
19 that?

20 A. I'm sorry, did he tell me what?

21 Q. Did Mr. Santos tell you where he
22 learned that from?

23 A. The street.

24 Q. And did he tell you specifically
25 who on the street gave him that information?

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2 A. I don't recall if he did or
3 didn't.

4 Q. Did he tell you during this
5 meeting on February 23rd, whether or not
6 anyone had specifically threatened him?

7 A. I don't recall.

8 Q. Did you make any record, any
9 written record, of your conversation with Mr.
10 Santos on February 23rd?

11 A. I don't recall. I don't think so.

12 Q. Did you ask him any questions at
13 this meeting of February 23rd concerning any
14 observations that he made on the day of the
15 homicide?

16 A. Don't recall.

17 Q. Did you discuss with him on
18 February 23rd whether or not his voice was
19 recorded on the 911 tape?

20 A. Don't recall.

21 Q. Did you tell him what would happen
22 to him, if anything, if he refused to comply
23 with the subpoena?

24 MR. LARKIN: Objection to the
25 form.

1 M. F. VECCHIONE

2 A. I advised him of several ways that
3 this could go. If he was afraid, I offered to
4 protect him, voluntary custody, we would have
5 detectives guarding him. I told him that
6 if -- the other possibility was that if he was
7 declared as a material witness, that a judge
8 could put him in civil jail.

9 Q. And what did he say?

10 A. He said I am not going to testify.

11 Q. Did you ever raise your voice with
12 him?

13 A. No.

14 MR. LARKIN: Objection.

15 Q. Did you ever threaten him in any
16 other manner with any consequence if he did
17 not agree to testify?

18 A. No.

19 Q. Do you remember what time of day
20 this meeting occurred?

21 A. I remember it was in the
22 afternoon. How late in the afternoon, I don't
23 remember, but I remember it was in the
24 afternoon.

25 Q. And what happened after Mr. Santos

1 M. F. VECCHIONE

2 told you that he would not respond to a
3 subpoena?

4 A. He was brought over in front of
5 Judge Egitto and a material witness order
6 proceeding was held in Judge Egitto's
7 chambers.

8 Q. Before he was brought to Judge
9 Egitto's courtroom or chambers was a material
10 witness application prepared?

11 A. We would have -- in order to get
12 him in front of Judge Egitto, we would have
13 had to have secured a warrant to bring him
14 over, and if you look at the third page of
15 this exhibit which is, I don't know, whatever
16 exhibit it is.

17 Q. Exhibit 91?

18 A. It looks like 91, you will see
19 that that is, it says there, at the second
20 paragraph: "You are therefore commanded
21 forthwith to arrest the above-named Angel
22 Santos within the State of New York and bring
23 him before this court for this proceeding."

24 We could not have brought him
25 involuntarily to Judge Egitto without having

1 M. F. VECCHIONE

2 that warrant.

3 Q. And did you, in fact, bring him
4 involuntarily to Judge Egitto?

5 A. I'm sorry, say it again.

6 Q. Did you, in fact, bring him
7 involuntarily to Judge Egitto?

8 A. That's my recollection, yes.

9 Q. And how did that happen? I mean,
10 how was that accomplished?

11 MR. LARKIN: Objection to the
12 form.

13 A. He walked with two detectives and
14 myself over to the courthouse.

15 Q. Did there come a point where you
16 realized that you would need him to draw up a
17 material witness application and obtain a
18 material witness warrant?

19 A. I have to say yes, but, you know,
20 I don't have a specific recollection of when
21 in the day it happened, but clearly that
22 happened, so.

23 Q. Well, there was a process by which
24 an application was made to the court that gave
25 you authority to take Mr. Santos involuntarily

1 M. F. VECCHIONE

2 from your office to the court?

3 A. It would have to be.

4 MR. LARKIN: Form objection.

5 Sorry.

6 A. Yes.

7 Q. Do you know how long that process
8 took?

9 A. I have no recollection of that at
10 all.

11 Q. While that process was going on,
12 where was Mr. Santos?

13 A. I remember Mr. Santos -- I'm not
14 sure if it was while it was going on. I
15 assume it was going on, but the only
16 recollection I have of Mr. Santos' presence is
17 in my office, so. I don't remember him being
18 any place else.

19 Q. Well, after Mr. Santos indicated
20 to you that he would not comply with the
21 subpoena, did you remain in his presence?

22 A. My recollection --

23 MR. LARKIN: Objection to form.

24 A. You know, I don't recall if I was
25 there constantly, or if I was in and out. I

1 M. F. VECCHIONE

2 don't recall specifically.

3 Q. Well, who was with him while your
4 office was applying for the material witness
5 warrant?

6 A. I don't recall specifically, but
7 detectives would have been there but I don't
8 recall which detectives or who, people could
9 have been in and out.

10 I just don't recall. It's a long
11 time ago.

12 Q. Do you know if Mr. Santos asked if
13 he was free to leave during that period?

14 MR. LARKIN: Objection.

15 A. I don't recall. But he was.

16 Q. He was free to leave?

17 A. Until we got the order to arrest
18 him?

19 Q. Yes.

20 A. Of course he was.

21 Q. Did anyone inform him of that?

22 A. I don't have any recollection of
23 that, but I'm sure that we did. I don't
24 recall it, but he was free to leave.

25 THE VIDEOGRAPHER: You have a few

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2 minutes left.

3 MR. RUDIN: Okay.

4 Q. Do you have any recollection of
5 how long it took from the time that he told
6 you he would not comply with the subpoena
7 until you walked over with him to court?

8 A. No.

9 Q. At the time you walked over with
10 him to court, you had received back from the
11 court a signed warrant for the arrest of Mr.
12 Santos?

13 A. The only way we could have brought
14 him over and the way that we did, was with a
15 warrant.

16 Q. Well, did you have -- did you see
17 the warrant?

18 A. I don't have any recollection, but
19 that doesn't mean that I didn't. I don't
20 recall it.

21 Q. Well, would you have brought him
22 to court if you didn't have a warrant?

23 A. Of course not.

24 Q. Did you wonder how your office
25 could have gotten a warrant if you didn't sign

1 M. F. VECCHIONE
2 an affirmation in support of a warrant?

3 MR. LARKIN: Objection.

4 A. Did I wonder that?

5 MR. LARKIN: Objection.

6 A. No, I don't recall wondering that
7 at all.

8 MR. RUDIN: Why don't we take a
9 break for lunch.

10 THE VIDEOGRAPHER: We are now
11 going off the record approximately 1:05
12 p.m. This is the end of disk No. 2.

13 (Lunch recess: 1:06 p.m.)
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2 A F T E R N O O N S E S S I O N

3 2:21 p.m.

4 M I C H A E L F. V E C C H I O N E,

5 having been previously duly

6 sworn/affirmed, was examined and

7 testified further as follows:

8 THE VIDEOGRAPHER: We're now going

9 back on the record approximately 2:21

10 p.m. This is the beginning of disk No.

11 3.

12 CONTINUED EXAMINATION

13 BY MR. RUDIN:

14 Q. Good afternoon, Mr. Vecchione.

15 A. Good afternoon.

16 Q. Mr. Vecchione, did you have any
17 understanding in 1995 about whether or not
18 under Rosario and Brady a trial prosecutor had
19 the obligation to disclose not only
20 information in his personal possession or
21 knowledge, but information that was in the
22 possession or the knowledge of others in the
23 office?

24 MR. LARKIN: Form objection.

25 A. Assuming that we knew about it,

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2 yes.

3 Q. Assuming, by we knew about it, you
4 mean that assuming that someone else in the
5 office knew about it?

6 A. No, assuming that the trial
7 attorney -- that the trial attorney had some
8 inkling of it or knew about it, yes.

9 Q. Well, did you have any
10 understanding in 1995 about whether cases
11 decided by the US Supreme Court or the New
12 York Court of Appeals required the office as
13 an entity to disclose Rosario or Brady
14 material?

15 MR. LARKIN: Objection to form.

16 MS. POLSTEIN: Objection as to
17 form.

18 A. To the office? I'm not -- I don't
19 understand the question.

20 Q. Well, what was your understanding
21 of whether or not a trial prosecutor --
22 withdrawn.

23 In 1995 what was your
24 understanding of whether or not a trial
25 prosecutor had any obligation to disclose,

1 M. F. VECCHIONE

2 let's say Rosario material that was in the
3 possession of other prosecutors in the office?

4 A. To the extent that --

5 MR. LARKIN: Objection to form.

6 I'm sorry.

7 A. To the extent that we knew about
8 it or had an inkling that it existed, we had
9 to turn it over.

10 Q. Well, did you have any
11 understanding in 1995 about what would happen
12 if you as a trial prosecutor failed to
13 disclose Rosario material that you didn't
14 actually know about, but was in the possession
15 of another prosecutor in the office?

16 MR. LARKIN: Objection to form.

17 MS. POLSTEIN: Objection as to
18 form.

19 A. I don't remember, to tell you the
20 truth.

21 Q. Well, have you ever had any
22 understanding to the effect that the trial
23 prosecutor had an obligation to find out
24 whether or not there was Rosario material in
25 the possession of anyone at the prosecutor's

1 M. F. VECCHIONE

2 office?

3 MR. LARKIN: Objection.

4 A. Anyone or everyone?

5 Q. Anyone and everyone.

6 MR. LARKIN: Objection to form.

7 A. That was not my understanding. I
8 have to search every file in every person's
9 office every time there was a case, is that
10 what you are saying? That is not my
11 understanding.

12 Q. What was your understanding of the
13 obligation of a trial prosecutor to disclose
14 Rosario material with respect to a particular
15 case?

16 A. To disclose it.

17 Q. And when you say "it," what is it?

18 A. Rosario material.

19 Q. And does Rosario material include
20 material that the trial prosecutor may not
21 have personal knowledge of but that others in
22 the office have personal knowledge of?

23 MR. LARKIN: Objection.

24 MS. POLSTEIN: Objection as to
25 form.

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2 A. My understanding is yes.

3 Q. And did that mean that the trial
4 prosecutor had an obligation to find out what
5 Rosario material, if any, was in the
6 possession of other prosecutors in the office?

7 MR. LARKIN: Form objection.

8 MS. POLSTEIN: Objection.

9 A. If there was an inkling or there
10 was some knowledge that that existed
11 somewhere, then yes. But we don't have the
12 obligation to search every file in the office
13 every time there is a case that comes in.

14 Q. Did you ever hear of the concept
15 of the strict liability?

16 A. Have I heard in the law?

17 Q. Yes.

18 A. Yes.

19 Q. Did you ever hear that concept
20 used with respect to the Rosario obligation?

21 A. No.

22 Q. Did you receive any training at
23 the Brooklyn DA's office about what
24 responsibility, if any, a trial ADA had to
25 discover and to disclose Rosario material that

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2 was in the possession of some other ADA in the
3 office?

4 MR. LARKIN: Objection.

5 A. I think I just answered the
6 question. If we had an inkling that it
7 existed, then we would need to go find it. I
8 couldn't search every file in every case in
9 the office for every time there was a case
10 that I had.

11 Q. In 1995 was it your understanding
12 that if you had an inkling that Brady material
13 might be in the possession of some other ADA
14 in the office, that you had an obligation to
15 search for it?

16 MR. LARKIN: Objection.

17 A. Brady material?

18 Q. Yes.

19 MS. POLSTEIN: Objection.

20 A. Of course.

21 Q. All right. Getting back to the
22 Angel Santos situation. You said that at some
23 point Mr. Santos was brought to the courtroom
24 of Justice Egitto?

25 A. Brought to Judge Egitto's

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2 chambers.

3 Q. And I think you said that he was
4 brought by two detective investigators?

5 A. I said that he was brought by, my
6 best recollection is detective investigators.
7 I don't know if it was two, one, three, I
8 don't remember.

9 Q. Do you remember the identity of
10 any of them?

11 A. I don't.

12 Q. Were you present when he was
13 transported?

14 A. I believe I walked over with him,
15 yes.

16 Q. And at that time did you have the
17 material witness warrant in hand?

18 A. I don't recall that.

19 Q. Do you know if anyone who was
20 walking with Mr. Santos had the material
21 witness warrant in hand?

22 A. Don't recall it.

23 Q. Was Mr. Santos informed before he
24 was taken to Judge Egitto that he was under
25 arrest?

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2 A. I don't recall.

3 Q. What happened when you arrived in
4 court with Mr. Santos?

5 A. We went into Judge Egitto's
6 chambers and a material witness order
7 proceeding or material witness proceeding,
8 whatever you want to call it, was held.

9 Q. And who was present for that
10 proceeding?

11 A. The best recollection that I have
12 is myself, Mr. Santos, Judge Egitto and a
13 court reporter.

14 Q. And did the court reporter
15 actually record the proceedings?

16 A. You'd have to ask the court
17 reporter. I would assume so, but I don't know
18 because I didn't read it. I don't know. I
19 can't read court reporter, so I don't know.

20 Q. Did you ever after that date try
21 to find out whether or not there, in fact,
22 were notes prepared by any court reporter?

23 A. I don't recall.

24 Q. Do you know whether anyone else at
25 the Brooklyn District Attorney's office has

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2 ever tried to find out if there were any notes
3 taken by any court reporter?

4 MR. LARKIN: Objection to form.

5 A. Anyone else?

6 Q. Yes of that session, of that
7 material witness proceeding.

8 MR. LARKIN: Objection to form.

9 A. I don't know.

10 Q. Have you ever seen the transcript
11 of that proceeding?

12 A. I can't recall if I did or didn't.
13 I don't know.

14 Q. How long did this proceeding last?

15 A. It would only be a guess.

16 Q. Do you have any recollection?

17 A. 20 minutes perhaps, maybe shorter.
18 I'm not really sure. So I really would rather
19 say I don't remember I don't recall.

20 Q. And did Mr. Santos have an
21 attorney present?

22 A. He did not.

23 Q. Did anyone discuss in your
24 presence whether he should have an attorney?

25 MR. LARKIN: Objection.

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2 A. I don't recall.

3 Q. Was he informed he had the right
4 to an attorney?

5 MR. LARKIN: Objection.

6 A. I don't recall that, either.

7 Q. Did Mr. Santos say anything during
8 that proceeding?

9 A. Don't recall.

10 Q. Did anybody ask him whether or not
11 he was willing to testify during that
12 proceeding? Well, withdrawn.

13 During that proceeding did anyone
14 ask him whether or not he was willing to
15 comply with a subpoena to testify at trial?

16 MR. LARKIN: Objection.

17 A. Judge Egitto.

18 Q. And what did Mr. Santos say?

19 A. Well, he was remanded to civil
20 jail, so his answer was no.

21 Q. Well, do you recall that he
22 answered no?

23 A. I don't recall specifically, but I
24 know what the result was.

25 Q. Was there any discussion about a

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2 possible bail amount being set for Mr. Santos
3 to ensure his appearance at trial?

4 A. I don't recall that.

5 Q. Did Judge Egitto make any inquiry
6 in that proceeding about whether or not Mr.
7 Santos, in fact, had material knowledge in
8 relation to the Collins prosecution?

9 A. I don't recall.

10 Q. Did Justice Egitto sign any kind
11 of order with respect to Mr. Santos' custody
12 at that point?

13 A. I believe he did.

14 Q. And did he sign in your presence?

15 A. I don't remember.

16 Q. Let me again show you Exhibit 91
17 and ask you if that --

18 A. Yes, sir.

19 Q. Is that the order that he signed?

20 A. This is the warrant that he
21 signed.

22 Q. Well, do you see at the bottom it
23 says "2/23/95 4:10 p.m. remanded to civil
24 jail"?

25 A. Yes.



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2 Q. And is that the order that Justice
3 Egitto signed after this proceeding that you
4 have been describing?

5 MR. LARKIN: Objection.

6 A. Justice Egitto signed?

7 MR. LARKIN: Sorry.

8 Q. Yes.

9 A. Justice Egitto signed the order
10 that is the first two pages, the material
11 witness order, as well as the warrant which is
12 what you just gave me.

13 Q. The warrant is the third page that
14 is Bates stamped 2107?

15 A. That's what gives the police
16 officers the right to arrest him, yes.

17 Q. Do you have any knowledge about
18 who wrote the handwriting on the bottom of
19 that page?

20 A. Yes.

21 Q. Who wrote that?

22 A. Me.

23 Q. "2/23/95 4:10 p.m. remanded to
24 civil jail" and then it is "S/Francis X.
25 Egitto."

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2 A. Correct.

3 Q. "JSC." That's your handwriting?

4 A. That's what it says and that's my
5 handwriting.

6 Q. Did Justice Egitto sign any other
7 document in his own handwriting remanding Mr.
8 Santos to civil jail?

9 A. I don't recall if there was some
10 sort of order or commit papers. I just don't
11 recall.

12 Q. Why did you sign this? Withdrawn.
13 Why did you write this in your
14 handwriting on this document?

15 A. I don't have a recollection as to
16 why I did.

17 Q. Do you have any recollection of
18 when you did it?

19 A. I would have done it at 2 --
20 whatever the time is; at 4:10 p.m. on the 23rd
21 of February, 1995.

22 Q. And when you did it, were you in
23 the presence of Judge Egitto?

24 A. I don't recall. I don't recall
25 when I did it. Other than the time and the

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2 date, I don't recall if it was outside, in the
3 anteroom which was in his chambers, I don't
4 recall.

5 Q. Did he tell you to do it?

6 A. He allowed me to do it because
7 that's what that S slash S slash means.

8 Q. He allowed you to sign this
9 document on his behalf?

10 A. That's what that means, yes.

11 MR. LARKIN: Objection to form.

12 Q. And after this document was
13 signed, what happened?

14 A. My best recollection is that Mr.
15 Santos was taken by detective investigators to
16 wherever civil jail was at that time. I don't
17 remember where it was.

18 Q. Did he go voluntarily?

19 MR. LARKIN: Objection.

20 A. Voluntarily?

21 MS. POLSTEIN: Objection as to
22 form.

23 A. He was declared a material
24 witness, so I guess the answer is no.

25 Q. And do you know which jail he was

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2 taken to?

3 A. I don't.

4 Q. Do you know how much time he spent
5 in jail?

6 A. I don't specifically remember, no.

7 Q. Do you remember it was
8 approximately a week?

9 A. I do remember -- that's what I was
10 about to say, it was approximately a week, but
11 I don't recall the specific amount of time.

12 Q. And during that week do you know
13 what jail he was being held in?

14 A. I don't recall if I did or not,
15 just don't recall.

16 Q. During that week did you have any
17 contact with Mr. Santos?

18 A. During the week?

19 MR. LARKIN: Objection to form.

20 Q. Yes.

21 A. Not that I can recall.

22 Q. Did there come a time when you saw
23 Mr. Santos again?

24 A. My best recollection is yes. I
25 don't recall when after he went in, whatever

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2 that time frame was, I don't remember.

3 Q. Where was the next place that you
4 recall seeing him?

5 A. I'm not sure. I don't know if it
6 was in the courthouse -- I honestly don't
7 recall.

8 Q. Do you recall any proceeding that
9 occurred in front of Judge Egitto after this
10 initial proceeding on February 23rd with
11 regard to Mr. Santos?

12 A. I recall a proceeding in which the
13 judge vacated the material witness order and
14 placed Mr. Santos in the custody of the
15 District Attorney's office.

16 Q. What led to Judge Egitto vacating
17 the material witness order?

18 A. My best recollection is that Mr.
19 Santos communicated with someone, and I don't
20 know who, that he was willing to testify, and
21 at that point we brought him out of civil
22 jail.

23 Q. And you don't know who he
24 communicated that to?

25 A. I honestly don't. I don't

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2 remember who it was.

3 Q. Did you ever know who he
4 communicated it to?

5 A. Did I ever?

6 MR. LARKIN: Objection to form.

7 A. I don't recall if I ever knew. I
8 would assume that I did, but I'm not going to
9 assume. I don't recall.

10 Q. Do you have any record of any
11 communication that Mr. Santos had with anyone
12 in your office concerning his willingness to
13 testify?

14 A. Do I have a record at home or in
15 my pocket or where?

16 Q. Are you aware of any record?

17 A. I'm not aware of any record, but I
18 don't recall if there was one.

19 Q. Did you personally speak to Mr.
20 Santos before he was taken to Judge Egitto a
21 second time?

22 A. I don't recall.

23 Q. Who brought him from the jail
24 where he was at, to the court on this second
25 occasion?

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2 A. Don't recall.

3 Q. What happened when he was taken to
4 court?

5 A. I know the result was that the
6 material witness order was vacated as I said
7 before.

8 Q. Before the material witness order
9 was vacated, what, if anything, happened in
10 court?

11 A. Don't remember.

12 Q. Who vacated the material witness
13 order?

14 MS. POLSTEIN: Objection.

15 A. Judge Egitto is the one who
16 ordered it, so he would have had to be the one
17 who vacated it.

18 Q. Did he issue any written order
19 vacating his earlier order?

20 A. I don't recall.

21 Q. Did Mr. Santos have an attorney on
22 this occasion?

23 A. I don't recall any attorney being
24 there.

25 Q. Do you recall whether or not Mr.

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2 Santos said anything to Judge Egitto before
3 the order was vacated?

4 A. Your question is what? Do --

5 Q. Did Mr. Santos say anything to the
6 judge before the judge vacated the order?

7 A. I don't recall.

8 Q. Now, after Judge Egitto vacated
9 his order, his previous order, I think you
10 indicated that he said something with respect
11 to Mr. Santos being in the District Attorney's
12 custody?

13 A. Yes.

14 MR. LARKIN: Objection.

15 Q. What was that?

16 A. I don't know the words that he
17 said, but he was, I know Mr. Santos went into
18 our custody, protective custody.

19 Q. Well, did the judge order that Mr.
20 Santos be held in your protective custody?

21 A. He can't order that to my
22 knowledge.

23 Q. So aside from vacating the order,
24 did he order anything else with respect to Mr.
25 Santos?

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2 MR. LARKIN: Objection to form.

3 You can answer.

4 A. What he would do is vacate the
5 order and then release the defendant -- I'm
6 sorry, release the witness into our custody.

7 Q. And where was he taken then?

8 A. Don't recall.

9 Q. Was he taken to a hotel?

10 A. Ultimately?

11 Yes.

12 Q. Well, before he was taken to a
13 hotel, was he taken anywhere else?

14 A. I don't recall where he was taken
15 after the courthouse.

16 Q. Did you interview him on that day?

17 A. I don't recall.

18 Q. Did you ever interview him before
19 he was taken to a hotel?

20 A. I don't recall.

21 Q. Do you recall ever interviewing
22 him before he testified?

23 A. Specific --

24 MR. LARKIN: Well, objection. He
25 interviewed him at least once. I mean,

1 M. F. VECCHIONE

2 he already testified to it. Objection
3 to form.

4 I'm sorry. Go ahead.

5 A. Did I interview him before I put
6 him on the stand at the trial?

7 Q. Yes.

8 A. Yes, I would have done that.

9 Q. All right, when is the first time
10 you interviewed him?

11 A. I don't have any recollection of
12 when I did it or how many times I did it.

13 Q. Did you take any notes when you
14 did it?

15 A. Don't recall. If I did, I would
16 have turned them over.

17 Q. Did you become aware at any point
18 that Mr. Santos was being housed by the
19 District Attorney's office at a hotel?

20 A. Yes.

21 Q. And when did you become aware of
22 that?

23 A. I believe the day that we had the
24 order vacated and he was released into our
25 custody.

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2 Q. Were you personally involved in
3 making arrangements for Mr. Santos to be
4 housed in a hotel?

5 MR. LARKIN: Objection.

6 A. No.

7 MR. RUDIN: Why don't we have this
8 marked as an exhibit.

9 (Plaintiff's Exhibit 156,
10 document entitled Custody
11 Reservation Request from the DA's
12 office marked for identification,
13 as of this date.)

14 A. Okay.

15 Q. Mr. Vecchione, do you recognize
16 what's been marked as Plaintiff's Exhibit 156?

17 A. Well, it says custody reservation
18 request from the DA's office.

19 Q. Is that on printed form that you
20 are familiar with?

21 A. You know, honestly, I'm really not
22 familiar with this form.

23 Q. I'm sorry?

24 A. I'm not familiar with this form.

25 Q. Is that your signature?

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2 A. There is a signature of mine on
3 here, yes.

4 Q. And does that in fact look to you
5 like your signature?

6 A. It does. M. Vecchione, yes.

7 Q. And is this a document whereby you
8 requested of somebody that a reservation be
9 made at the Crowne Plaza Hotel?

10 A. That says request of signature and
11 my signature is above it.

12 Q. Is that your understanding of what
13 the purpose of this document was?

14 A. To have somebody request it so
15 that the records of the office would be
16 complete, yes.

17 MR. RUDIN: Let me show you this
18 document.

19 (Plaintiff's Exhibit 157,
20 document regarding Crown Plaza
21 Hotel room reservations marked for
22 identification, as of this date.)

23 A. Okay.

24 Q. Do you recognize this document?

25 A. No.

1 M. F. VECCHIONE

2 Q. Is this a form of document you
3 have seen before?

4 A. I can't say that I have.

5 Q. Do you know how many rooms were
6 reserved at the Crowne Plaza Hotel with
7 respect to the custody of Mr. Santos?

8 A. Of my own knowledge or reading
9 from this document?

10 I have no knowledge of my own, but
11 I just can see it says here room 619 and 621.
12 I don't know what they refer to, though. Go
13 ahead.

14 Q. And this document indicates two
15 rooms, a single and an adjoining double?

16 A. Where does it say that?

17 Q. The first paragraph, the first
18 sentence.

19 A. Two rooms, a single and an
20 adjoining double. I see that.

21 Q. Do you have any understanding of
22 who was in the single room and who was in the
23 adjoining double?

24 A. Do I know for a fact?

25 MR. LARKIN: Objection to the

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2 form.

3 A. I don't know since I wasn't there.

4 Q. Was there a practice at that time,
5 that's in 1995, when a witness was in the
6 district attorney's custody, to reserve two
7 rooms in a hotel?

8 MR. LARKIN: Objection to form.

9 A. To the best of my recollection,
10 yes, there would be one for the DIs, or one
11 for whoever it was that was guarding him, and
12 one for the witness.

13 Q. And would the witness be free to
14 leave?

15 MR. LARKIN: Objection.

16 A. You have to ask the DIs. I don't
17 know.

18 Q. You don't know?

19 A. I don't.

20 Q. Was Mr. Santos free to leave when
21 he was in the custody of the DIs at this
22 hotel?

23 MR. LARKIN: Objection to form.

24 MR. RUDIN: Well, withdrawn.

25 Q. Was Mr. Santos in fact held in the

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2 custody of detective investigators from the
3 DA's office at a hotel?

4 A. He was in --

5 MR. LARKIN: Form objection.

6 Sorry.

7 A. Okay. Well, you say held in
8 custody. He was being guarded and was in
9 protective custody. He was not being held.

10 Q. Well, was he free to leave?

11 A. You have to ask them; I don't
12 know.

13 Q. Well, did you have any
14 understanding during the period that Mr.
15 Santos was in a hotel prior to his testimony,
16 whether or not he was free to leave?

17 MR. LARKIN: Objection to the
18 form.

19 A. I have no understanding of that at
20 all. I wasn't involved in this kind of
21 procedure so I don't know.

22 Q. Well, did you know any of the
23 detective investigators who were guarding him
24 during the period that he was in the hotel?

25 MR. LARKIN: Objection.

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2 A. I don't know who was guarding him.

3 Q. Did you ever visit Mr. Santos at
4 the hotel?

5 A. I did not.

6 Q. Was he ever brought to your office
7 for you to speak to him while he was being
8 housed at the hotel?

9 A. Well, I spoke to him before he
10 testified, so I have to assume yes, but I
11 don't have a specific recollection of when or
12 how many days.

13 Q. Do you know if he was brought in
14 in handcuffs?

15 A. He would not have been brought in
16 handcuffs that's what my recollection is
17 because he was not being held in protective --
18 he was -- against his will, so there would be
19 no reason to put him in handcuffs.

20 Q. Was he a prisoner at the hotel?

21 A. Prisoner? Not to my knowledge.

22 Q. Did the office have a hotel
23 custody program in 1995 under which witnesses
24 were held in hotels and were not free to
25 leave?

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2 MR. LARKIN: Objection to the
3 form.

4 A. I'm not aware of any such policy
5 or custom or whatever it is that you asked.

6 Q. Were you aware in 1995 that that
7 ever happened?

8 MR. LARKIN: Objection to form.

9 MS. POLSTEIN: Objection.

10 Q. By that ever happened, I mean that
11 a witness was held in a hotel by the District
12 Attorney's office and not free to leave.

13 MR. LARKIN: Objection.

14 MS. POLSTEIN: Objection.

15 A. I have no recollection of that.

16 Q. Were you aware of any practice
17 where that ever happened?

18 MR. LARKIN: Objection: form.

19 A. No recollection.

20 Q. Was this the first time, that is
21 the experience you had with Angel Santos,
22 where a witness in a homicide case that you
23 were prosecuting was in hotel custody?

24 MR. LARKIN: Objection to form.

25 MS. POLSTEIN: Objection to form.

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2 A. I can't recall.

3 MR. RUDIN: Have this document,
4 marked, please.

5 (Plaintiff's Exhibit 158,
6 document dated May 12, 1993 bearing
7 Bates Nos. P-021003-004 marked for
8 identification, as of this date.)

9 MR. RUDIN: This document is Bates
10 stamped P-021003 to 004.

11 Q. Mr. Vecchione, please let us know
12 when you have finished reviewing it.

13 A. Oh, okay.

14 Q. I'm going to ask you a question
15 about the first numbered paragraph, number 1.

16 Have you read it over?

17 A. Not yet.

18 Q. Have you finished the document?

19 A. Okay.

20 Q. Did you know Chief Investigator
21 Albert A. Pica?

22 A. Yes.

23 Q. How long did you know him?

24 MS. POLSTEIN: Objection.

25 MR. RUDIN: Well, withdrawn.

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2 Q. Was he the chief investigator for
3 the DA's office on May 12, 1993?

4 A. To the best of my recollection.

5 Q. Do you know how long he stayed in
6 that position?

7 A. I don't. I don't know.

8 Q. And did you ever see this
9 memorandum before?

10 A. I don't recall seeing it.

11 Q. Do you see that in the first -- in
12 the second paragraph with the number 1, it
13 says:

14 "There are many reasons why a
15 person is placed in custody. It is usually
16 for his or her own protection, therefore the
17 location of the custody must be kept strictly
18 confidential. In the case of a hostile
19 witness or a potential RSD detectives will
20 exercise sufficient controls to guard against
21 escape"?

22 A. I see it.

23 Q. Does that refresh your
24 recollection that there were situations in
25 which individuals were held in hotel custody

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2 against their will?

3 MR. LARKIN: Well, objection to
4 form.

5 A. It does not refresh my
6 recollection.

7 Q. Were you aware of any policy at
8 the DA's office to hold individuals so that
9 they could not escape?

10 MR. LARKIN: Objection to form.

11 MS. POLSTEIN: Objection.

12 Q. Hold people at hotels so that they
13 could not escape?

14 MS. POLSTEIN: Objection.

15 MR. LARKIN: Objection.

16 A. I'm going to ask you to repeat the
17 question.

18 Q. Were you aware in 1995 of any
19 policy at the DA's office to hold witnesses at
20 hotels to guard against their escape?

21 MR. LARKIN: Objection to the
22 form.

23 A. No.

24 Q. Are you aware of any authority
25 under law for the District Attorney's office

1 M. F. VECCHIONE

2 to hold a witness in a hotel against his or
3 her own will?

4 MR. LARKIN: Objection.

5 A. Not my area. I don't know.

6 MR. RUDIN: Mark this.

7 THE WITNESS: Before we ask the
8 next question, I want to go back and
9 correct one thing. When you asked me
10 was I aware of other custodies, was the
11 time frame before '95 or after? I'm not
12 sure what I answered.

13 Q. I think I asked you before '95.

14 A. I recall one other custody that I
15 had involving a case in which a defendant by
16 the name of Eric Jackson Knight, he was the
17 defendant in the case. I'm not sure when that
18 was, if it was before '95 or after '95.

19 Q. And who was the witness who was
20 held in custody?

21 A. Her name was Christine Maroni.

22 Q. And where was she held in custody?

23 A. I don't have any idea.

24 Q. Was she held in a hotel?

25 A. Don't have any idea where she was

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2 held.

3 Q. Do you know if she was held
4 against her will?

5 A. My recollection is that --

6 MR. LARKIN: Objection. Sorry.

7 A. She was not held against her will.

8 (Plaintiff's Exhibit 159,
9 document bearing Bates Nos.

10 10306-309 marked for
11 identification, as of this date.)

12 Q. 159 is Bates stamped 10306 through
13 10309.

14 I would like to direct your
15 attention to the second page.

16 A. Page 2?

17 Q. Yes.

18 A. Yes.

19 Q. Do you see that someone wrote on
20 this form Holiday Inn Crowne Plaza?

21 A. "Location: Holiday Inn Crowne
22 Plaza."

23 Q. And then there is a phone number
24 written in?

25 A. Yes.

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2 Q. And then it says ADA Vecchione?

3 A. Yes.

4 Q. Is this your handwriting, by the
5 way?

6 A. No.

7 Q. And then it says "Supervisor
8 Bondor"?

9 A. Yes.

10 Q. Who is Bondor?

11 A. Steve Bondor was a detective
12 investigator.

13 Q. And how well did you know Mr.
14 Bondor in 1995?

15 MR. LARKIN: Objection.

16 A. Well, I came back to the office in
17 '92. I don't remember when I met him, so.

18 Q. That's someone you developed a
19 close relationship with?

20 MR. LARKIN: Objection.

21 A. I wouldn't -- close relationship,
22 what is that? I mean, you have to clarify
23 that. I don't know what that means. He's a
24 work colleague.

25 Q. Well, did you ever socialize with

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2 him outside the office?

3 A. There were occasions when we did.

4 Q. Did that occur before this
5 document was prepared in 1995?

6 A. I don't have any recollection of
7 when it was. It could have been before or
8 after, I don't know.

9 Q. Did you work with him on other
10 cases besides the Collins case prior to March
11 of 1995?

12 A. Yes.

13 Q. About how many cases?

14 A. At least two that I can remember.
15 It might have been more than that. It might
16 have been three.

17 Q. Do you remember the names of the
18 cases?

19 A. One was Raymond, defendant's name
20 was Raymond Vargas. One was I believe the
21 Eric Jackson Knight case. And the other was,
22 I believe, yeah, and the name of the defendant
23 was Romaine LaFond.

24 Those are the three that I
25 remember.

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2 Q. All right, now, returning to this
3 form, do you see that it says "Name of witness
4 in custody: Angel Santos"?

5 A. I see that.

6 Q. And do you see that on this
7 printed form there is a space, there is an
8 entry where it says "Prisoner: Y or N"?

9 A. I see that.

10 Q. And do you see in this case it is
11 someone checked Y for yes?

12 A. I see that.

13 Q. Does that indicate to you that Mr.
14 Santos was being held as a prisoner?

15 MR. LARKIN: Objection to form.

16 A. Mr. Santos was not being held as a
17 prisoner.

18 Q. Well, do you know who filled out
19 this form?

20 A. No.

21 Q. Did you ever see this form before?

22 A. Can't say that I did.

23 Q. Well, let me break that down.

24 Did you ever see, not this
25 particular form filled out for the witness

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2 Angel Santos; have you ever seen this printed
3 form in general before?

4 A. Can't say that I did.

5 Q. Do you have any understanding why
6 someone put down that Angel Santos was being
7 held as a prisoner?

8 MR. LARKIN: Objection to the
9 form. I'm sorry.

10 A. You are asking me to look into
11 someone else's mind.

12 Q. I'm asking you for an explanation.

13 A. I have no idea -- I told you Angel
14 Santos was not a prisoner. I don't know why
15 someone would check yes. I have no idea.

16 Q. Do you know why your office had a
17 printed form regarding hotel custodies where
18 someone can check off whether or not the
19 person was being held as a prisoner?

20 MR. LARKIN: Objection. The word
21 hotel custody does not appear on this
22 document, I believe. And Mr. Vecchione
23 described protective custody which is
24 something different.

25 Q. Well, do you see that on the form

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2 it says "name of witness in custody"?

3 A. I do.

4 Q. Do you have any explanation for
5 why your office in 1995 had a printed form
6 with respect to a witness in custody that had
7 a space to indicate whether or not he was
8 being held as a prisoner?

9 A. I already answered the question.

10 MR. LARKIN: Objection to the
11 form.

12 A. The answer is I do not. This is
13 not my form. I do not know.

14 Q. Do you see that on pages 2 and 3
15 of this form, there is a list of shifts for
16 when detective investigators were guarding or
17 in the presence of the witness?

18 A. I --

19 MR. LARKIN: I'm sorry, what page
20 are you looking at?

21 MR. RUDIN: Pages 2 and 3.

22 MR. LARKIN: Okay.

23 MR. RUDIN: 307 to 308.

24 MR. LARKIN: Okay.

25 A. I see days and dates and I see

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2 names next to it.

3 Q. All right. And that's goes for
4 March 2nd through March 9th?

5 A. March 2nd, the 3rd, 4th, the 5th,
6 the 6th, the 7th, the 8th, the 9th.

7 Q. Do you recognize all of these
8 names as names of detective investigators?

9 A. No.

10 Q. Do you recognize any of them as
11 detective investigators?

12 A. Yes.

13 Q. Which ones do you recognize?

14 A. Bondor and Maher, Augustine,
15 Betso. Some I can't read.

16 Q. Leon?

17 A. I don't know who that is.

18 Q. Did any of the detective
19 investigators whose names appear on this
20 document, speak with you prior to Mr. Santos
21 testifying, about Mr. Santos?

22 A. Not that I can recall.

23 Q. What is your understanding of why
24 Mr. Santos was in protective custody?

25 A. He was afraid of your client's

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2 friends and family and others connected to
3 him.

4 Q. Was he in custody -- was he in the
5 custody of detective investigators for his
6 protection?

7 A. Protective --

8 MR. LARKIN: Objection to form.

9 A. -- custody is what we called it,
10 yes, that's what it was.

11 Q. Do you see on that document that I
12 showed you that there is no entry after March
13 9th?

14 A. I see the last entry is March 9th.
15 Yes.

16 Q. Do you know whether or not Mr.
17 Santos was protected by any detective
18 investigator for the District Attorney's
19 office after March 9th?

20 A. I have no --

21 MR. LARKIN: Objection to form.

22 Q. I'm sorry?

23 A. I have no recollection of that.

24 Q. By the way, do you know when Mr.
25 Santos' identity was first disclosed to the

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2 defense in connection with the Jabbar Collins
3 prosecution?

4 MR. LARKIN: Objection.

5 A. Did you say where or when?

6 Q. When.

7 A. You asked me that before. I said
8 I don't know. I don't remember.

9 Q. You testified a little while ago
10 that when Mr. Santos was in your office,
11 before you obtained a material witness warrant
12 and order, that he mentioned to you that he
13 was in fear?

14 A. At some point when he was in my
15 office he mentioned to me that he was in fear,
16 yes.

17 Q. And did he say to you whether or
18 not there was anyone in particular who had
19 threatened him?

20 A. You asked me that already and I
21 said no, I don't recall see -- I don't recall
22 that.

23 Q. Well, did the subject of his
24 having received threats or being in fear, ever
25 come up again?

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2 MR. LARKIN: Objection to form.

3 A. What does that mean? I have no
4 idea what you mean.

5 Q. After the first time that Mr.
6 Santos was in your office before you got the
7 material witness order, did he ever discuss
8 with you again the subject of being in fear?

9 A. I have no recollection.

10 MR. LARKIN: Objection.

11 A. I don't know. I don't recall.

12 Q. Between time that Judge Egitto
13 vacated the material witness order and the
14 time that Mr. Santos testified at trial, did
15 he discuss with you any threats that had been
16 made against him?

17 MR. LARKIN: Objection to form.

18 A. Don't recall.

19 Q. Did you handle any case prior to
20 Mr. Collins' case where there was a witness
21 for the District Attorney's office who
22 received protection?

23 MR. LARKIN: Objection to form.

24 A. I just told you one. Yes.

25 Q. You referred to the --

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2 A. Christine Maroni, the Eric Jackson
3 Knight case, I recall that case.

4 Q. And were you involved in any case
5 before Mr. Collins' case in which a witness
6 was given assistance through a witness
7 protection or witness relocation office within
8 the District Attorney's office?

9 MR. LARKIN: Objection to form.

10 A. I don't know what you are
11 referring to. Witness relocation office?

12 Q. Was there a witness protection
13 office?

14 A. I don't know what you are
15 referring to.

16 Q. Was there an office run by a
17 fellow named Edward Wishner?

18 A. Who?

19 Q. Wishner.

20 A. I have no recollection of that.

21 MR. RUDIN: Let's mark this.

22 (Plaintiff's Exhibit 160,
23 document bearing Bates Nos.
24 10299-302 marked for
25 identification, as of this date.)

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2 Q. 160 is Bates stamped 10299 through
3 10302, a four-page document.

4 A. Okay.

5 Q. Have you ever seen that document
6 before?

7 A. During prep.

8 Q. Was that the first time you saw
9 it?

10 A. I don't know if it was the first
11 time I saw it. I recollect seeing it during
12 prep. I don't recall seeing it before.

13 Q. The document is called Threat
14 Analysis?

15 A. That's what it is called.

16 Q. Have you ever seen this form
17 before?

18 A. I can't say that I have.

19 Q. And it indicates that the ADA is
20 yourself, Vecchione?

21 A. 2884 of 94 was my case, yes.

22 Q. And the subject of threat is Angel
23 Santos?

24 A. That's what it says.

25 Q. And then there is certain details

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2 that are provided in the body of the document
3 on the first page about the substance of the
4 threats that he said he received?

5 A. That's what it -- well, there are
6 details in here, yeah.

7 Q. Do you recall him telling you
8 those details?

9 A. It is not my writing.

10 MR. LARKIN: Objection to form.

11 A. I don't recall the details. I
12 don't recall what he told me specifically
13 other than what I have already told you about
14 the threats.

15 Q. Well, would you read over what it
16 says on this document under threat and tell us
17 whether that refreshes your recollection
18 about --

19 A. Received --

20 Q. No, you can read it to yourself.

21 A. Okay. I've read it.

22 Q. Does that refresh your
23 recollection about anything that Mr. Santos
24 said in your presence about threats that he
25 had received?

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2 A. Not specifically.

3 Q. You see on this document that
4 somebody wrote: "If you go to court and
5 testify, we are going to blow you away"?

6 A. I see that's in that section, yes.

7 Q. And then it says E/ --

8 A. Well, actually it doesn't say
9 that. It says: "If you go to court and
10 testify, we're going to blow you away."

11 Q. Right. And then it goes on to say
12 that "E/W's family," is that eye witness?

13 A. I didn't write this.

14 Q. "Has been approached on the street
15 by persons unknown stating in essence the
16 same."

17 A. That's what it says.

18 Q. And then it says: "Approximately
19 8 to 10 telephone calls were made one time
20 E/W's wife dialed *69 and the person repeated
21 kill kill kill."

22 A. That's what it says.

23 Q. "Telephone threats were made
24 sometime in May and August of 1994."

25 A. That's what it says.

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2 Q. Did you ever ask Mr. Santos
3 whether he could provide a description of any
4 of the individuals who approached him or his
5 family on the street?

6 A. Don't recall.

7 Q. Did you ever speak to any members
8 of Mr. Santos's family to see if you could
9 obtain a description of who threatened them?

10 A. Well, the question is did I
11 ever -- did I ever speak to anyone in his
12 family?

13 Q. Yes. To ask whether or not they
14 could provide a description of any person who
15 had made threats to them?

16 A. I don't recall.

17 Q. Did you ever subpoena any
18 telephone records in order to try to ascertain
19 who Mr. Santos' wife called when she dialed
20 *69 before the person said kill kill kill?

21 MR. LARKIN: Objection to form.

22 A. I don't recall.

23 Q. Did you ever ask anyone to
24 investigate the allegations on this form?

25 MR. LARKIN: Well, just objection

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2 to the form.

3 You can answer.

4 A. Anyone in the world?

5 Q. Yes.

6 A. I have a recollection of the
7 police department being notified, but....

8 Q. Did you ever ask anyone to
9 investigate these threats?

10 A. I have no specific -- I don't
11 recall.

12 Q. Did you ask anyone to prepare this
13 threat analysis form?

14 A. Don't recall.

15 Q. Do you see that the paralegal,
16 there is a paralegal listed, Noonan?

17 A. Excuse me?

18 Q. Do you see that there is a
19 paralegal listed, Noonan?

20 A. That's what it says.

21 Q. Would Ms. Noonan have prepared
22 this form unless you directed her to?

23 A. I don't know that Ms. Noonan --

24 MR. LARKIN: Objection to the
25 form.

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2 I'm sorry.

3 A. You are assuming a fact that I
4 don't know. I don't know if Ms. Noonan filled
5 this form out. I don't know who did.

6 Q. Well, would anyone have prepared
7 this form unless you directed them to?

8 MR. LARKIN: Objection.

9 A. Sure.

10 Q. Who would have prepared this form
11 without --

12 MR. LARKIN: Objection.

13 A. Whoever was in charge of doing
14 threat analysis.

15 Q. Did you ever explain to Mr. Santos
16 that he could obtain benefits as a witness,
17 financial benefits, if he said that he had
18 been threatened?

19 MR. LARKIN: Objection.

20 A. I don't even know what you are
21 talking about.

22 Q. Well --

23 A. I don't recall anything like that.
24 I have no idea what you are talking about.

25 Q. Well, do you know whether or not

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2 the District Attorney's office provided any
3 relocation benefits to Mr. Santos or his
4 family?

5 A. I believe that his family was
6 moved. I don't know if that was as a result
7 of us. I don't recall.

8 Q. Did your office have any rules
9 about whether or not a threat, a claim of a
10 threat was necessary before a witness' family
11 was moved?

12 A. You would have to ask someone in
13 the office. I don't know.

14 (Plaintiff's Exhibit 161,
15 document bearing Bates Nos. 10314
16 and 0578 marked for identification,
17 as of this date.)

18 MR. RUDIN: 161 has two pages, the
19 first one is Bates stamped 10314 and the
20 second one is Bates stamped 0578.

21 Q. Have you ever seen either of these
22 pages before?

23 A. I saw them during prep.

24 Q. Was that the first time you saw
25 them?

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2 A. No recollection of when I saw
3 them, if I saw them at all. I don't recall.

4 Q. Did you ever ask anyone to call in
5 a complaint to the New York City Police
6 Department about alleged threats to Angel
7 Santos?

8 A. I don't recall. I know one was,
9 but I don't recall.

10 Q. Do you know whether or not after
11 Mr. Santos completed his testimony, there was
12 any investigation by the New York City Police
13 Department into the alleged threats against
14 him?

15 A. I don't know.

16 Q. Did Angel Santos at any point tell
17 you that he was a drug user?

18 A. That he was what?

19 Q. A drug user?

20 A. I don't recall.

21 Q. Did anyone ever tell you that
22 Angel Santos was a drug user?

23 A. Don't recall.

24 MR. LARKIN: Do you mind if we,
25 literally, take two minutes?

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2 MR. RUDIN: Sure.

3 THE VIDEOGRAPHER: We are now
4 going off the record approximately 3:10
5 p.m.

6 (Recess taken.)

7 THE VIDEOGRAPHER: We're now going
8 back on the record approximately 3:19
9 p.m.

10 BY MR. RUDIN:

11 Q. Mr. Vecchione, would you turn your
12 attention just briefly again to Exhibit 91.

13 A. Sure.

14 Q. That's the Angel Santos material
15 witness order.

16 A. Yes.

17 Q. To the last page -- well, actually
18 the next-to-last page of that document, it's
19 Bates stamped 2108.

20 A. Yes.

21 Q. Do you see at the bottom of that
22 page it says "On February 23rd, 1995
23 Detectives Bondor and Maher located Mr. Santos
24 and brought him to the District Attorney's
25 office where Mr. Santos articulated to the

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2 detectives, as well as Michael Vecchione, that
3 he would not testify at trial nor would he
4 avail himself to be served a subpoena directly
5 to testify." Do you see that?

6 A. Yes, I see that.

7 Q. Were you required to disclose that
8 at Mr. Collins's trial as Rosario material?

9 MR. LARKIN: Objection to the
10 form.

11 MS. POLSTEIN: Objection.

12 A. As Rosario material?

13 Q. Yes.

14 A. Not to my knowledge.

15 Q. Wasn't that a prior statement by
16 Mr. Santos?

17 A. It is a prior recorded statement
18 by Mr. Santos is what we are required to turn
19 over, and this is not a statement; this is
20 just simply a conclusion on the part of these
21 detectives.

22 Q. Conclusion based on what?

23 A. Based on what Santos told them.

24 Q. And your testimony is that because
25 it was a conclusion, you weren't required to

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2 turn it over?

3 MR. LARKIN: Objection to form.

4 A. My understanding of Rosario is to
5 turn over recorded statements of a witness
6 which is going to be the subject matter of his
7 testimony.

8 Q. And so what's the reason that this
9 did not have to be turned over?

10 A. I didn't say --

11 MR. LARKIN: Objection to form.

12 Sorry.

13 A. I'm sorry, say that again.

14 Q. What is your explanation for why
15 this did not have to be turned over?

16 MR. LARKIN: Objection.

17 You can answer.

18 A. This is not recorded statement
19 by -- of the witness.

20 Q. Doesn't it document statement,
21 that he articulated to the detectives certain
22 information?

23 MR. LARKIN: Objection.

24 MS. POLSTEIN: Objection.

25 A. It is not a recorded statement of

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2 the witness.

3 Q. And that's consistent with your
4 training at the Brooklyn DA's office?

5 MR. LARKIN: Objection.

6 A. It is consistent with my
7 understanding of Rosario. And while we are on
8 this, I just want to just make sure that we
9 are clarified about one thing.

10 This signature of Justice Egitto
11 which you asked me before, you asked me where
12 that was done. I wasn't sure if it was inside
13 or in the anteroom. I just want to make sure
14 that everyone understands and that you
15 understand that that was done with his
16 permission. I was conforming his order, this
17 document to his order. Just so that we are
18 clear.

19 Q. So is there an order somewhere
20 that he actually signed?

21 A. If there is, I don't know about
22 it. I don't know. I have no idea.

23 Q. Let me show you again Plaintiff's
24 94. Would you turn to the third page of that
25 document, 34084.

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2 A. I'm sorry, give it to me again.

3 Q. The third page of that document
4 that's Bates stamped 34084. Paragraph 2:

5 "The inmate has communicated
6 through representatives of this office that
7 the inmate possess information concerning
8 criminal matters unrelated to any criminal
9 action pending against the inmate which the
10 inmate desires to reveal to this office."

11 A. Where -- I'm sorry, you are going
12 to have to tell me which page. I can barely
13 see these numbers.

14 Q. The third page.

15 A. Okay.

16 Q. Which is the --

17 A. An affirmation?

18 Q. Yes. Do we have the same
19 document, that's Exhibit 94?

20 A. Yes.

21 Q. The affirmation, the second
22 paragraph.

23 A. Okay, and what's your question?

24 Q. Were you required to disclose that
25 information as Rosario material?

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2 MR. LARKIN: Objection to form.

3 A. "I'm submitting this affirmation
4 in support"?

5 Q. No, the second paragraph: "The
6 inmate has communicated through
7 representatives of this office" --

8 A. Well, it is actually the third
9 paragraph so. You asked me to look at the
10 second paragraph.

11 Q. The second, it has a number 2 in
12 front of it.

13 A. So did the one above it.

14 Q. Well, it looks to me like the one
15 above it has number 1 and above that it says
16 "I, Michael Vecchione."

17 A. Well, then your eyesight is better
18 than mine.

19 "The inmate has communicated to
20 representatives of the office that inmate
21 possesses information concerning criminal
22 matters unrelated to any criminal action
23 pending against the inmate which the inmate
24 desires to reveal to this office."

25 Do I believe that's Rosario?

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2 Q. Yes.

3 A. No.

4 Q. Why not?

5 A. Because it's not Rosario.

6 Q. Did you become aware at some point
7 of efforts by your office to locate Adrian
8 Diaz?

9 MR. LARKIN: Just objection to the
10 form.

11 MS. POLSTEIN: Objection to the
12 form.

13 MR. RUDIN: What's the objection?

14 MS. POLSTEIN: Prior to trial.

15 MR. RUDIN: Prior to trial.

16 Withdrawn.

17 Q. Prior to trial did you become
18 aware of efforts by individuals employed by
19 the Brooklyn DA's office to locate Adrian
20 Diaz?

21 A. I did.

22 Q. And when did that happen that you
23 became aware of that?

24 A. Don't recall.

25 Q. How long before trial?

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2 A. Don't recall.

3 Q. Was there at some point before
4 trial that you were preparing for trial and
5 you realized you didn't have any witnesses at
6 all who implicated Jabbar Collins in --

7 A. Don't recall.

8 MR. LARKIN: Objection to form.

9 Q. I'm sorry?

10 A. Don't recall that.

11 MR. LARKIN: Can I get that
12 question read back.

13 A. That I had no witnesses -- what do
14 you mean no witnesses? Are you talking about
15 in my office or who had ever implicated him?

16 MR. RUDIN: Do you still want the
17 question read back?

18 THE WITNESS: Yeah.

19 MR. LARKIN: Yes, can I just get
20 it read back. I'm sorry.

21 (Record read.)

22 A. Adrian Diaz had implicated him and
23 so did Angel Santos.

24 Q. All right. My question was
25 unclear as your attorney objected. Actually

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2 my question is unclear as your attorney
3 properly objected.

4 Was there a time before trial when
5 you became aware that none of the witnesses
6 who had earlier implicated Jabbar Collins in
7 the homicide were cooperating with your
8 office?

9 MR. LARKIN: Objection to the
10 form.

11 A. None total?

12 No.

13 Q. Well, was there a point in
14 February of 1995 when you had been unable to
15 obtain the cooperation of Mr. Oliva, you were
16 unable to obtain the cooperation of Mr. Santos
17 and you had not spoken to Mr. Diaz?

18 A. The question is not something I
19 can answer.

20 Q. Why?

21 A. Repeat the question again and I'll
22 tell you why.

23 MR. RUDIN: Can we have the
24 question read back please.

25 (Record read.)

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2 MR. LARKIN: Just note a form
3 objection.

4 A. We couldn't -- with regard to
5 Oliva as I said before, he wasn't responding
6 to anything. That didn't mean he was
7 uncooperative; he just wasn't responding.

8 And who was the other one?
9 Santos?

10 Q. Santos.

11 A. Santos, I told you what his
12 response was.

13 Q. And then Diaz?

14 A. Diaz didn't say he wasn't
15 cooperative. He wasn't around.

16 Q. Do you recall the date, the
17 approximate date that you left for Puerto Rico
18 to find Mr. Diaz?

19 A. It was the Sunday of that last
20 week in February. I believe it was February
21 26th.

22 Q. At the time that you left for
23 Puerto Rico, had Mr. Santos agreed to testify
24 for the DA's office?

25 A. Mr. Santos?

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2 Q. Yes.

3 A. What's the date that he went
4 into --

5 Q. February 23rd.

6 A. The day we brought him before
7 Judge Egitto?

8 Q. Yes.

9 A. The 23rd?

10 Q. Yes.

11 A. I don't believe I learned -- I
12 don't think he notified us that he was going
13 to cooperate until after I got back from
14 Puerto Rico. Or at least that's when I
15 learned about it. I don't know when he
16 ultimately came to that decision.

17 Q. And the date that you finally
18 determined that Mr. Oliva would be willing to
19 testify was March 6th?

20 A. Correct.

21 Q. So at the time you went to Puerto
22 Rico to see if you could locate Mr. Diaz, you
23 did not have any witness who was then
24 cooperating with your office who would
25 implicate Mr. Collins in the homicide?

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2 MS. POLSTEIN: Objection to form.

3 MR. LARKIN: Form objection.

4 A. I've already answered the
5 question. Same answer.

6 Q. Well, would you answer that
7 question.

8 A. Same answer as the one I gave you
9 before.

10 MR. LARKIN: Form.

11 MR. RUDIN: I would ask that the
12 witness answer that question as --

13 A. I gave you the answer. Same
14 answer.

15 Q. Were you aware at the time you
16 went to Puerto Rico whether or not Mr. Diaz
17 had testified in the grand jury?

18 A. Was I aware of it?

19 MS. POLSTEIN: Objection.

20 A. Yes.

21 Q. Had he testified in the grand
22 jury?

23 A. To the best of my recollection he
24 testified in the grand jury, yes.

25 Q. At the time you left for Puerto

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2 Rico were you aware whether or not Mr. Diaz
3 had had any contact with your office between
4 the time that he testified in the grand jury
5 and that date?

6 A. I don't recall.

7 MR. LARKIN: Objection.

8 A. I don't recall.

9 MR. LARKIN: Objection to form.

10 Q. Before you left for Puerto Rico
11 did anyone employed by your office make any
12 efforts to locate Mr. Diaz?

13 MS. POLSTEIN: Objection.

14 A. Detective investigators.

15 Q. And what efforts had they made?

16 A. Whatever detective investigators
17 do. I don't know.

18 Q. Well, did they speak to you about
19 what efforts they made?

20 A. If they did, I don't recall.

21 Q. Were you aware at the time you
22 left for Puerto Rico whether or not Mr. Diaz
23 was on probation?

24 A. I don't recall. I don't think so,
25 no.

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2 Q. You were not aware if he was on
3 probation?

4 A. No. I learned that in Puerto
5 Rico.

6 Q. Well, did Mr. Maher or Mr. Bondor
7 tell you before you went to Puerto Rico that
8 they had been in contact with the probation
9 department with respect to Mr. Diaz?

10 A. I don't recall any such
11 communication.

12 Q. Did they tell you how they
13 determined that he was in Puerto Rico?

14 A. Yes.

15 Q. What did they tell you?

16 A. They told me that they had gone to
17 Mr. Diaz's home or home of a relative, I'm not
18 sure exactly as I sit here today, began to
19 talk to people in that home, I don't know who,
20 and they determined, and they were told that
21 he had gone to Puerto Rico because he had been
22 frightened or was threatened and they saw a
23 letter or some sort of envelope that was
24 addressed to whoever's home it was with a
25 return address on it in Puerto Rico.

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2 Q. And the return address was for
3 whom?

4 A. As it turns out, it was for Adrian
5 Diaz.

6 Q. Well, before you left for Puerto
7 Rico, did you know whether or not that address
8 was the address of Mr. Diaz?

9 A. The detective investigators had a
10 strong belief that it was. I don't recall if
11 they were told that it was, I just don't
12 recall.

13 Q. Who did you bring on the trip to
14 Puerto Rico?

15 A. Excuse me?

16 Q. Who went with you on the trip to
17 Puerto Rico?

18 A. Detectives Bondor, Maher, myself
19 and Stacey Frascogna.

20 Q. Why did you bring Bondor and
21 Maher?

22 A. So they could go and locate Mr.
23 Diaz.

24 Q. Did you anticipate that there was
25 a possibility that Mr. Diaz would have to be

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2 brought back involuntarily?

3 A. Yes. We had contemplated that,
4 sure.

5 Q. And how would that happen?

6 A. Excuse me?

7 Q. How would that be accomplished?

8 MR. LARKIN: Objection to form.

9 MR. RUDIN: Well, withdrawn.

10 Q. At the time what was your thinking
11 about how that would be accomplished if you
12 had to bring him back involuntarily?

13 MR. LARKIN: Just objection to
14 form.

15 A. We would have to use an interstate
16 material witness order.

17 Q. And did you discuss with anyone
18 obtaining an interstate material witness
19 order?

20 A. Yes.

21 Q. Who did you discuss that with?

22 A. Charles Posner.

23 Q. And what did you discuss with Mr.
24 Posner?

25 A. Get -- we might need a material

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2 witness order, interstate material witness
3 order. Do it.

4 Q. And did you learn at some point
5 that he had obtained an interstate material
6 witness order?

7 A. Well, I now saw something I think
8 you showed it to me, and I saw something
9 during prep that indicated that, in fact,
10 Judge Egitto did sign an order from here
11 that's one-half of it.

12 You then have to go to a judge in
13 the jurisdiction where the individual lives
14 and bring the individual before that judge.

15 Q. Well, did you try to find out
16 after you arrived in Puerto Rico, whether or
17 not Mr. Posner had succeeded in getting the
18 judge to sign the material witness order?

19 A. I don't --

20 MR. LARKIN: Objection to form.

21 A. I don't recall that.

22 Q. Did it occur to you while you were
23 in Puerto Rico that you might actually need
24 the material witness order in order to bring
25 back Mr. Diaz to the jurisdiction?

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2 MR. LARKIN: Objection to form.

3 A. It occurred to me when I was in
4 New York.

5 Q. So while you were in Puerto Rico
6 did you try to find out whether or not your
7 office had in fact obtained the order?

8 A. I don't recall if I did or didn't.
9 I just don't recall.

10 Q. And it is your testimony that when
11 you were in Puerto Rico you did not become
12 aware of whether or not a material witness
13 order had been obtained?

14 A. That's not my testimony. I said I
15 don't recall.

16 Q. Why did you bring Ms. Frascogna to
17 Puerto Rico?

18 A. Ms. Frascogna was the individual
19 who put the case into the grand jury, put
20 Adrian Diaz in the grand jury and had
21 developed a rapport with Mr. Diaz from what I
22 was lead to believe, and it was the detective
23 investigators idea to bring her down so that
24 if they had located him, perhaps we could talk
25 him back to New York rather than having to go

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2 through the process of going to a judge in
3 Puerto Rico and presenting Mr. Diaz and then
4 running the risk of perhaps him not ordering
5 him back.

6 So if we could get him back
7 voluntarily, that would be the way to go.

8 Q. So that was their idea?

9 A. That was their idea, yes.

10 Q. It wasn't your idea?

11 A. It was not my idea.

12 Q. Did Ms. Frascogna speaking Spanish
13 have anything to do with her going down to
14 Puerto Rico?

15 A. Ms. Frascogna spoke conversational
16 Spanish.

17 Q. Did you know whether Mr. Diaz
18 spoke English?

19 A. I don't believe I ever spoke to
20 Mr. Diaz, but I believe he testified -- I
21 don't recall, but I believe he did, that's
22 what my recollection is as I sit here today,
23 but my recollection is that he was much more
24 comfortable in Spanish.

25 Q. Well, were you aware whether or

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2 not when he testified in the grand jury, he
3 testified in English?

4 A. I don't recall. If I had the
5 grand jury minutes, I would be able to tell
6 you, refresh my memory.

7 Q. Did you ever go on any trip
8 outside New York State on any other occasion
9 to bring back a witness?

10 MR. LARKIN: Objection. Prior to
11 this time, or any time?

12 MR. RUDIN: Well, we can start
13 with prior.

14 A. I don't recall.

15 Q. How about after?

16 A. I don't recall.

17 Q. Was your having a relationship
18 with Ms. Frascogna any part of the decision to
19 bring her to Puerto Rico?

20 MR. LARKIN: Objection.

21 A. I had no relationship with Ms.
22 Frascogna at that time.

23 Q. Did you ever have a relationship?

24 A. I did.

25 Q. And when did that develop?

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2 A. Some time after August of 1995,
3 because I separated from my wife in August of
4 1995 and it was some time after that.

5 Q. When is the last time you spoke
6 with Ms. Frascogna?

7 A. At my sister's wake several years
8 ago.

9 Q. How long did the relationship
10 last?

11 A. I honestly don't recall. A couple
12 of years. I don't remember.

13 Q. During the period that the two of
14 you had a relationship, did you ever recommend
15 her for a promotion or a raise?

16 MR. LARKIN: Objection to all of
17 this.

18 A. Not that I can recall.

19 Q. Did you ever evaluate her while
20 she was at the DA's office?

21 A. Not that I can recall.

22 Q. When you got to Puerto Rico, what
23 happened with respect to Mr. Diaz?

24 A. That's a very broad question.

25 MR. LARKIN: Objection.

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2 A. We got to Puerto Rico on a Sunday.

3 Do you want me to start on Sunday?

4 Q. Sure. I mean, I'm asking an
5 open-ended question. If I ask a leading
6 question, there will be an objection to a
7 leading question. Starting with an open
8 question, you can tell us whatever you think
9 is significant with respect to Mr. Diaz that
10 happened.

11 MR. LARKIN: Objection.

12 A. I'm not going to do that. You are
13 going have to ask me questions.

14 Q. When you got to Puerto Rico, what
15 if anything, happened with respect to your
16 efforts to locate Mr. Diaz?

17 A. The district -- DIs found him. He
18 was brought back to our hotel and Ms.
19 Frascogna spoke to him. He agreed to come
20 back.

21 Q. Do you know where the DIs found
22 him?

23 A. Specifically? A long way away
24 from where we were.

25 Q. Did the DIs tell you anything that

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2 occurred when they were trying to find him?

3 A. Yes, they did.

4 Q. What did they tell you?

5 A. They told me when they finally
6 located his home or where he was, that they
7 found out that he had run out the back door or
8 something of that nature. And that they
9 ultimately -- and that they were worried about
10 dogs and they had stepped through mud, they
11 had to go through quite an ordeal to get to
12 speak to him because of the mud, the dogs and
13 all the rest.

14 Q. Did they tell you whether or not
15 they asked him why he had run out the back
16 door?

17 A. I don't know if they told me that,
18 but they told me that he thought that they
19 were from probation which is when I learned
20 that he was on probation.

21 Q. And did he tell them that he
22 thought they were there to arrest him for
23 violating his probation?

24 A. I don't recall that. I don't
25 recall specifically, but when someone tells

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2 you that the guy ran because he thought that
3 they were from probation, it is a fairly
4 logical conclusion, but I have no idea if he
5 was violating. I have no idea.

6 Q. When Mr. Diaz was brought back
7 to -- withdrawn.

8 Were you in San Juan?

9 A. Was I in San Juan? When?

10 Q. When Mr. Diaz was brought back to
11 meet with you?

12 A. Yes.

13 Q. And I assume at that point you had
14 a conversation with him?

15 A. At some point.

16 Q. During that conversation did you
17 ask him any questions about his knowledge
18 about the Rabbi Pollack shooting?

19 A. In Puerto Rico?

20 Q. Yes.

21 A. I don't have any recollection of
22 that.

23 Q. Did you ask him why he tried to
24 run away from the detective investigators?

25 A. Don't have any recollection of

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2 that.

3 Q. Did you ask him about his
4 knowledge of his status on probation?

5 A. Don't recall.

6 Q. Did you ask him what he was on
7 probation for?

8 A. Don't recall.

9 Q. Did you ask him why he had moved
10 to Puerto Rico from New York?

11 A. Ask him?

12 Q. Yes.

13 A. In Puerto Rico?

14 Q. Yes.

15 A. Don't recall.

16 Q. Did you tell him that you had
17 obtained a interstate material witness order
18 under which you could bring him back
19 involuntarily?

20 MR. LARKIN: Objection to form.

21 A. I don't recall. I don't know why
22 I would, but I don't recall.

23 Q. Well, did you tell him, in words
24 or in substance, that if he did not come back
25 with you voluntarily, you could bring him back

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2 involuntarily?

3 A. Didn't have to.

4 MR. LARKIN: Objection.

5 Q. What do you mean?

6 A. He agreed to come back with the
7 detective investigators and then reiterated
8 that to Ms. Frascogna.

9 Q. When you say come back with the
10 detective investigators, do you mean come back
11 to New York?

12 A. Come back to New York.

13 Q. Before he told you he was willing
14 to come back to New York, did he discuss with
15 you any concerns he had for his own safety?

16 A. He discussed --

17 MR. LARKIN: Objection to the
18 form. I'm sorry.

19 A. -- with the detective
20 investigators that he was willing to come back
21 and he discussed -- I don't know what was
22 discussed between him and Stacey because I
23 wasn't present for that.

24 Q. Well, did he ever discuss in your
25 presence while you were in Puerto Rico that he

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2 had any concern for his safety if he came back
3 to New York?

4 A. I don't have any recollection of
5 that.

6 Q. Did he ever discuss in your
7 presence in Puerto Rico, that he had any
8 concern that if he came back to New York he
9 might be arrested by the probation department
10 for violating the terms of his probation?

11 A. I don't have any recollection of
12 that, but I told him I was going to have to
13 notify probation when I got back.

14 Q. Did you tell him when you would
15 notify probation?

16 A. When we got back to New York.

17 Q. Did you tell him whether or not
18 you would notify probation before or after he
19 testified?

20 MR. LARKIN: Objection to form.

21 A. I told him when he was in Puerto
22 Rico. That was before he testified.

23 Q. Did you tell him whether or not
24 you would notify probation upon your arrival
25 in New York?

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2 A. I don't know if I used those exact
3 words, but I told him that I would have to
4 notify probation.

5 Q. Did you tell him that you would do
6 or say anything to probation to assist him in
7 not having his probation violated?

8 A. I did not.

9 Q. Did you tell him that you would
10 tell probation that he was cooperating with
11 you?

12 MR. LARKIN: Objection to form.

13 A. I don't recall that. I don't
14 recall. But I -- if I had done that, I would
15 have turned it over. I don't recall what I
16 turned over in terms of the record.

17 Q. Did you report to the probation
18 department at any point that Mr. Diaz was in
19 New York?

20 A. I recall calling the probation
21 department at least once.

22 Q. And when did you do that?

23 A. The only recollection I have is
24 because my memory was refreshed during prep I
25 think I called them the day of March --

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2 whatever day he testified, March 10th, I
3 think. I'm not sure.

4 Q. Before or after he testified?

5 A. I believe it was after, but I'm
6 not sure that I didn't call before that.
7 Someone did, I believe. I'm not sure if it
8 was me or if it was detective investigators
9 during that week, because my recollection is
10 that thinking that why isn't probation
11 contacting us.

12 Q. Did you ask anyone to call the
13 probation department to let them know that Mr.
14 Diaz is in the jurisdiction?

15 A. I don't have a specific
16 recollection of that, but the detective
17 investigators would do such a thing.

18 Q. Well, did you ask any detective
19 investigator to do such a thing?

20 A. I don't have a recollection of
21 that.

22 Q. Have you seen any record
23 indicating that you asked any detective
24 investigator to notify probation?

25 MR. LARKIN: Well, objection.

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2 Go ahead.

3 A. I have seen no such record.

4 Q. Have you seen any record
5 indicating that a detective investigator did
6 notify probation?

7 A. I saw a record or a document
8 indicating that a member of the probation
9 department sent some information to Detective
10 Bondor.

11 Q. And was that a document indicating
12 that Mr. Diaz had violated probation?

13 A. I believe so, but you will have to
14 show it to me to refresh my memory. I'm not
15 sure.

16 Q. Was that a document that you
17 understood was sent to Mr. Bondor before Mr.
18 Diaz was brought back from Puerto Rico?

19 A. I have no recollection when that
20 was sent.

21 Q. Was that a document that was in
22 the files of your office?

23 A. I don't know. I don't believe so,
24 but I don't know. I don't have any
25 recollection -- I don't know. I really don't

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2 know.

3 Q. Well, were you aware of that
4 document at the time of the trial?

5 A. I don't believe so. I don't
6 really recall.

7 Q. Did you disclose prior or during
8 Mr. Collins' trial that Mr. Diaz had tried to
9 run away from the detective investigators in
10 Puerto Rico?

11 MR. LARKIN: Objection.

12 A. What I disclosed is what I
13 disclosed on the record.

14 Q. Well, do you have any recollection
15 of disclosing that?

16 MR. LARKIN: Objection to form.

17 A. What I disclosed is what's on the
18 record.

19 Q. Were you required to disclose that
20 under Brady?

21 A. What I disclosed is on the record.

22 Q. No, that's not my question. My
23 question is whether you were required to
24 disclose that under Brady?

25 A. Brady?

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2 MR. LARKIN: Form objection.

3 MS. POLSTEIN: Objection.

4 A. I don't consider that to be Brady.

5 Q. Why not?

6 A. Because it is not exculpatory.

7 Q. Do you think it goes to his motive
8 to cooperate with your office?

9 MR. LARKIN: Objection to form.

10 MS. POLSTEIN: Objection.

11 MR. LARKIN: Are you talking about
12 the fact that he ran away from the DIS?

13 MR. RUDIN: Yes.

14 A. I don't think anything like that.

15 Q. Did you learn prior to Mr. Diaz's
16 testimony whether in fact the probation --
17 well, withdrawn.

18 Did you learn prior to Mr. Diaz's
19 testimony, that anyone at the probation
20 department considered that Mr. Diaz was in
21 violation of the terms of his probation?

22 A. I don't have any recollection --

23 MR. LARKIN: Objection.

24 MS. POLSTEIN: Objection.

25 A. I don't have any recollection of

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2 that.

3 Q. Well, did you try to find out
4 prior to Mr. Diaz's testimony whether in fact
5 he was in violation of the terms of his
6 probation?

7 A. I don't have any recollection of
8 that.

9 Q. Well, did you ask Mr. Diaz whether
10 he had permission to move to Puerto Rico?

11 MS. POLSTEIN: Objection.

12 A. Don't recall.

13 (Discussion off the record.)

14 MR. RUDIN: Can we have this
15 document marked, please.

16 (Plaintiff's Exhibit 162,
17 document bearing Bates Nos. 9401-02
18 marked for identification, as of
19 this date.)

20 A. Okay.

21 Q. Is that your signature on the
22 second page of that document?

23 A. It is.

24 Q. Did you send that letter to the
25 probation department?

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2 A. I did.

3 Q. Why did you send the letter?

4 A. Memorialize the interaction I had
5 with the probation department. In the event
6 someone or some event like this happened in
7 the future, I would have a record of it.

8 Q. Well, did you tell the probation
9 department in this letter that you had
10 telephoned them after Mr. Diaz testified?

11 MR. LARKIN: Objection to form.

12 Q. "Following his testimony I
13 telephoned you."

14 A. Do you want to point it to me so I
15 can find it quickly, or not?

16 Q. Yes, it is the third line from the
17 bottom on the first page.

18 A. "On March 10, '94 Mr. Diaz did
19 testify"?

20 Q. Yes.

21 A. "Following his testimony I
22 telephoned you to apprise you of the facts and
23 to inform you that Mr. Diaz was being returned
24 to Puerto Rico for his safety."

25 I see that.

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2 Q. Well, does that refresh your
3 recollection that you called them after he
4 testified?

5 MR. LARKIN: Objection to form.

6 A. Well, I mean, it kind of speaks
7 for itself.

8 Q. At the time that you telephoned
9 the probation department was Mr. Diaz already
10 en route to Puerto Rico?

11 A. I have no recollection of that. I
12 don't think so, but I have no recollection
13 specifically.

14 Q. Did you ever call the probation
15 department at a time when the probation
16 department would have had an opportunity to
17 arrest Mr. Diaz?

18 MR. LARKIN: Objection to form.

19 MS. POLSTEIN: Objection as to
20 form.

21 A. My recollection is thinking from
22 the time we came back to the time we put him
23 on the plane again, why isn't the probation
24 department coming or doing something with this
25 guy.

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2 MR. RUDIN: Let's have this one
3 marked.

4 (Plaintiff's Exhibit 163,
5 document bearing Bates Nos. 9393-94
6 marked for identification, as of
7 this date.)

8 MR. RUDIN: Just to make a record,
9 the Bates number for 162 is 9401 to 02,
10 and the Bates number for 163 is 9393 to
11 94.

12 Q. Mr. Vecchione, is that your
13 signature on Exhibit 163?

14 A. It is.

15 Q. And why did you send that letter?

16 A. The purpose of this letter was to
17 apprise the probation department of the
18 address of Mr. Diaz in Puerto Rico.

19 Q. At the time that you sent this
20 letter had you learned that the probation
21 department was still intending to seek Mr.
22 Diaz's arrest for violating the terms of his
23 probation?

24 MR. LARKIN: Objection.

25 MS. POLSTEIN: Objection.

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2 A. That's a question I can't answer.
3 I have no idea what you are saying. Do you
4 want to break it up.

5 Q. At any point did you learn that
6 the probation department was preparing papers
7 for the arrest of Mr. Diaz for violating
8 probation?

9 MR. LARKIN: Objection.

10 A. I don't recall.

11 Q. Were you aware of such a fact at
12 the time that you sent your letter of June 26?

13 A. Don't recall that.

14 Q. During your preparation for the
15 trial of Mr. Collins did you ever interview an
16 individual named Charles Glover?

17 A. Charles Glover? Did I?
18 Not that I can recall.

19 Q. Did you ever ask anyone at your
20 office to interview Charles Glover?

21 A. Not that I can recall.

22 Q. Prior to or during -- well, my
23 question was before trial. Let me just ask
24 you, during trial did you, yourself, or did
25 you ask anyone to interview Charles Glover?

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2 A. Not that I can recall.

3 Q. Did you ever interview a witness
4 named Lisa Rodriguez?

5 A. Not that I can recall.

6 Q. Did you ever ask anyone to
7 interview Liza Rodriguez?

8 A. Same answer.

9 Q. Did you ever interview any of the
10 Ashby brothers?

11 A. Not that I can recall.

12 Q. Did you ever ask anyone to
13 interview any of the Ashby brothers?

14 A. Same answer.

15 Q. Did you ever learn that there were
16 individuals who were alleged to be alibi
17 witnesses for Mr. Collins?

18 MR. LARKIN: Objection to the
19 form.

20 A. I believe that at some point there
21 was some indication that his mother might be
22 an alibi witness.

23 Q. Did you ever see any police
24 reports that stated that anyone, in addition
25 to Mr. Collins' mother, was a potential alibi

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2 witness?

3 A. I don't remember.

4 MR. LARKIN: Well, objection to
5 form.

6 A. I don't recall that.

7 Q. Did you ever interview anyone whom
8 you believed claimed to be an alibi witness
9 for Mr. Collins?

10 A. I don't recall.

11 Q. Were you still the attorney of
12 record for the District Attorney's office
13 after Mr. Collins was sentenced?

14 MR. LARKIN: Objection.

15 A. I don't have any clue as to what
16 that means.

17 Q. After Mr. Collins was sentenced,
18 were you still assigned responsibility for
19 handling his case?

20 A. No.

21 MR. LARKIN: Objection.

22 Q. I'm sorry?

23 A. Handling what?

24 Q. Mr. Collins' case?

25 A. What about his case?

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2 Q. Were you still assigned
3 responsibility to handle his case after he was
4 sentenced?

5 A. You mean if there was an appeal?

6 Q. Yes.

7 MR. LARKIN: Objection.

8 A. I was not assigned to the appeal.
9 I don't do appeals.

10 Q. Did you learn at some point that
11 he had filed a pro se 440 motion?

12 A. I know it now.

13 Q. Were you assigned to respond to
14 any pro se 440 motion?

15 A. No.

16 Q. Were you assigned to respond to
17 the 440 motion that he filed in 2006?

18 A. No.

19 MR. LARKIN: Okay.

20 A. You said 2006. Right?

21 Q. Yes.

22 A. No.

23 Q. Did you learn at any point that
24 Mr. Collins had made a request of your office
25 for documents in this case under the freedom

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2 of information law?

3 A. I know that now.

4 Q. Were you aware of it at the time
5 that any such request was made?

6 A. No.

7 Q. Did anyone employed by the
8 District Attorney's office speak with you
9 concerning any request that Jabbar Collins had
10 made under the freedom of information law?

11 A. I'm not sure I understand that
12 question.

13 Q. Well, let me just --

14 A. Alerting me or telling me?
15 I'm not sure I understand the
16 question so be more specific.

17 Q. Well, did you ever see any written
18 freedom of information law request that Mr.
19 Collins had made to your office?

20 A. No.

21 Q. Did you ever learn that anyone at
22 the DA's office was assigned to respond to a
23 freedom of information law request that Mr.
24 Collins had made of the office?

25 MR. LARKIN: Objection. At any

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2 time or at the time the requests were
3 filed?

4 MR. RUDIN: At the time the
5 requests were filed.

6 A. No.

7 Q. Are you saying that the first time
8 you became aware that Mr. Collins had made a
9 freedom of information law request was during
10 the prep for this deposition?

11 MR. LARKIN: Well, objection.

12 A. I'm not saying that.

13 Q. Well, when did you first become
14 aware that --

15 A. I believe that there were named
16 parties in one of these lawsuits who were in
17 the FOIL unit, from what I understand, so
18 that's when I learned it.

19 Q. When the federal lawsuit was filed
20 that --

21 A. I don't recall which lawsuit it
22 was, but somewhere along the line I learned
23 it.

24 Q. Well, did you learn it in
25 connection with the federal civil rights

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2 lawsuit that we're questioning about today?

3 MR. LARKIN: Just note my

4 objection to the form.

5 A. It is very possible. I just don't
6 remember when.

7 Q. Did you learn before Mr. Collins
8 was released in connection with the federal
9 habeas proceeding, that prior to that date he
10 had made a FOIL request of the DA's office?

11 MR. LARKIN: Objection to the
12 form.

13 A. Did anyone alert me to the FOIL
14 request, or did I learn about a fact of a FOIL
15 request somewhere in the past?

16 I'm not sure I understand your
17 question.

18 Q. Before Mr. Collins was released --

19 A. Right.

20 Q. -- from custody pursuant to the
21 federal habeas corpus proceeding --

22 A. Um-hum.

23 Q. -- were you aware or had anyone
24 told you that Mr. Collins had filed a freedom
25 of information law request with your office?

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2 A. You know, I know it was in my
3 head. I don't know where it came from.

4 Q. When was it in your head?

5 A. I don't remember. If I could
6 remember, I would give you the answer. I
7 don't remember. It was -- I presume during
8 the pendency of the federal habeas. I don't
9 recall, really. I don't recall as to whether
10 or not it was a claim, so.

11 Q. Before Mr. Collins was released
12 from custody, did you learn from any source
13 that Mr. Collins had made a freedom of
14 information law request that included any
15 material witness order that was obtained
16 during his criminal prosecution?

17 A. No.

18 Q. Now, I believe you testified
19 earlier that there came a time when you did
20 become aware that he filed the 440 motion in
21 2006?

22 A. I did become aware of that, yes.

23 Q. And at the time you became aware
24 of that motion, did you read it?

25 A. I'm sorry, did I what?

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2 MR. LARKIN: Objection.

3 A. Did I read it?

4 Q. Withdrawn.

5 A. Is that your question?

6 Q. Withdrawn.

7 After you became aware that a
8 motion was filed by Mr. Collins in 2006, did
9 you read the motion papers?

10 A. I recall that I did, yes.

11 Q. And did you discuss with anyone at
12 the DA's office the content of those motion
13 papers?

14 A. Well, an affirmation was prepared
15 in my behalf, so just by virtue of that I
16 guess I did.

17 Q. Before the affirmation was
18 prepared on your behalf, did you discuss the
19 content of the 440 motion with District
20 Attorney Hynes?

21 A. With District Attorney Hynes?

22 Q. Yes.

23 A. I don't recall any such
24 discussion.

25 Q. Did you discuss the content of the

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2 motion with Amy Feinstein?

3 A. Don't recall any such discussion.

4 Q. Lanz Ogiste?

5 A. I don't recall any such
6 discussion.

7 Q. Anne Swerne?

8 A. Don't recall any such discussion.

9 Q. Do you recall any discussion with
10 anyone at an executive level at the Brooklyn
11 District Attorney's office concerning the
12 Jabbar Collins 440 motion before the point
13 that you executed your affirmation?

14 A. Don't recall.

15 Q. Did you become aware at some point
16 that Monique Ferrell was assigned to respond
17 to the 440 motion?

18 A. Yes.

19 Q. And how did you become aware of
20 that?

21 A. I think she told me.

22 Q. Did she tell you who had assigned
23 her?

24 A. Yes.

25 Q. What did she tell you?

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2 A. She told me that Jodi Mandel from
3 the appeals bureau assigned it to her.

4 Q. Did you discuss with Ms. Ferrell
5 anything that happened during her deposition
6 in this case?

7 MR. LARKIN: Objection. You can
8 answer.

9 A. The questions and answers?

10 Q. Yes.

11 A. Is that what you mean?

12 Q. Well, did you have any discussion
13 with her about her deposition in this case?

14 A. Sure. I asked her how it went.

15 Q. Did you ask her what she was
16 questioned about?

17 A. No.

18 Q. Did you ever learn what she was
19 questioned about?

20 A. No.

21 (Discussion off the record.)

22 THE VIDEOGRAPHER: Now going off
23 the record approximately 4 p.m. This is
24 the end of disk No. 3.

25 (Recess taken.)

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2 THE VIDEOGRAPHER: This is the
3 beginning of disk No. 4. We are now
4 going back on the record approximately
5 4:12 p.m.

6 BY MR. RUDIN:

7 Q. Ready?

8 A. Yes.

9 Q. Mr. Vecchione, at any point before
10 you signed your affirmation in connection with
11 Mr. Collins' 440 motion, did you have
12 possession of any of the documents from the
13 original Collins prosecution?

14 MR. LARKIN: Objection to form.

15 A. I believe that I reviewed the
16 file, so I guess the answer is yes.

17 Q. Did you have the file in your
18 office?

19 A. Well, it was either in my office
20 or in a conference room, I don't recall.

21 Q. When you reviewed it, did you
22 review it alone or with other people?

23 A. I would have reviewed it alone,
24 but I don't have a recollection, a specific
25 recollection of that.

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2 Q. At the time you reviewed the file,
3 were the pages in the file numbered in any
4 way?

5 A. Don't recall.

6 Q. I believe you testified earlier
7 that you are not sure whether or not someone
8 else prepared your affirmation or whether you
9 prepared it?

10 MR. LARKIN: Objection.

11 Q. Does that accurately state your
12 testimony.

13 MR. LARKIN: Objection.

14 Q. Well, I will just ask you again.
15 I will withdraw the question.

16 Do you know who prepared an
17 original draft of your affirmation?

18 A. I don't recall. You mean, are you
19 talking about typing it? Or -- I don't really
20 recall.

21 Q. Well, what was the process for the
22 preparation of your affirmation?

23 MR. LARKIN: Objection to form.

24 Go ahead.

25 A. It was seven years ago. I don't

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2 recall.

3 Q. The document that you ultimately
4 signed as your affirmation, was that prepared
5 by you or by somebody else?

6 MR. LARKIN: Form objection.

7 A. I don't know how many times I can
8 answer it.

9 I don't recall that. I really
10 don't recall.

11 Q. Did you ever make any handwritten
12 changes in any draft of an affirmation?

13 A. I recall making some changes. I
14 don't recall if they were handwritten or in
15 what form, but I do recall revising a draft of
16 some kind and I don't -- that I do remember,
17 yeah.

18 Q. Do you remember any of the
19 revisions that you made?

20 A. No.

21 Q. Have you seen the draft that you
22 made revisions on since that time?

23 MR. LARKIN: Well, objection.

24 Since the time he made the changes?

25 MR. RUDIN: Yes.

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2 MR. LARKIN: Okay.

3 A. No, I don't recall seeing it.

4 Q. Do you know whether it still
5 exists?

6 A. No, I don't.

7 Q. Do you know who, if anyone,
8 besides Monique Ferrell, was involved in the
9 process of responding to Mr. Collins' 440
10 motion?

11 A. I don't.

12 MR. LARKIN: Objection to form.

13 Q. Do you know somebody named Marie
14 Claude Wrenn?

15 A. I know the name.

16 Q. Did you speak to her in connection
17 with the 440 motion?

18 A. I guess the quick answer is no. I
19 don't know that I have ever spoken to her in
20 my life. I have no idea.

21 No, with connection to the 440,
22 the answer is no.

23 Q. Prior to signing the final version
24 of your affirmation, did you discuss with
25 Monique Ferrell any of the circumstances of

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2 the Santos material witness order?

3 MR. LARKIN: Objection to form.

4 A. You know, I don't recall. I just
5 don't recall.

6 Q. Before signing your affirmation
7 did you discuss with Ms. Ferrell that Mr.
8 Santos had been in jail before he ultimately
9 testified?

10 A. I don't recall.

11 Q. Did you review with Ms. Ferrell
12 the Santos material witness order before you
13 signed your affirmation?

14 A. I don't recall.

15 Q. Did you discuss with Ms. Ferrell
16 that Mr. Santos had been held at a hotel?

17 MR. LARKIN: Object -- well,
18 objection to form.

19 MR. RUDIN: Well, withdraw it.

20 Q. Did you discuss with Ms. Ferrell
21 before you signed your affirmation that Mr.
22 Santos had stayed in a hotel before he
23 testified at trial?

24 A. I don't recall.

25 Q. Did you review with Ms. Ferrell

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2 before you signed your affirmation, the
3 Damiani order for Mr. Oliva at the bottom of
4 which he wrote that he was refusing to go with
5 the detective investigators from the DA's
6 office?

7 MR. LARKIN: Objection.

8 A. Don't recall.

9 Q. Were you aware of that Damiani
10 order at the time that you signed your
11 affirmation?

12 A. I don't recall.

13 Q. At the time you signed your
14 affirmation had you reviewed any of the
15 contents of the District Attorney's file in
16 connection with the robbery prosecution of
17 Edwin Oliva for the robbery that occurred
18 shortly before he gave a statement to police
19 about Jabbar Collins?

20 A. I don't recall.

21 MR. LARKIN: Form objection.

22 Q. Were you aware at the time you
23 signed your affirmation, of any records at the
24 Brooklyn District Attorney's office
25 documenting an effort made by Mr. Oliva's

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2 attorney to get him a better plea bargain than
3 he originally was offered by your office in
4 connection with his robbery case?

5 A. I don't recall.

6 MR. LARKIN: Objection.

7 Q. At the time you signed your
8 affirmation were you aware of any written
9 statement that Mr. Oliva had made falsely
10 denying his involvement in the robbery that
11 immediately preceded his statement to police
12 in the Jabbar Collins case?

13 MR. LARKIN: Well, objection.

14 A. Don't recall.

15 Q. Did you become aware at some point
16 that a federal habeas corpus petition had been
17 filed on behalf of Jabbar Collins?

18 A. Yes.

19 Q. And when did you become aware of
20 that?

21 A. I don't have a specific
22 recollection, but certainly after you filed
23 it, or someone filed it.

24 Q. And after you became aware that it
25 was filed, did you become aware whether anyone

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2 from your office was assigned to respond to
3 it?

4 A. I don't recall when, but clearly
5 someone was assigned.

6 Q. Well, did you learn that it was
7 Monique Ferrell?

8 A. Yes.

9 Q. And at the time that Monique
10 Ferrell was assigned to the Collins habeas
11 matter, what was her position in the office?

12 MR. LARKIN: Objection to the
13 form.

14 A. I'm trying to remember if she
15 was -- at one point she was counsel to the
16 rackets division and then chief counsel to the
17 rackets division. I don't recall when that
18 happened, so I don't know. So she was at
19 least counsel to the rackets division.

20 Q. Is she still counsel or chief
21 counsel to the rackets division?

22 A. Chief counsel to the rackets
23 division.

24 Q. What are her responsibilities as
25 chief counsel to the rackets division?

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2 A. She counsels us.

3 Q. And by us, do you include
4 yourself?

5 A. Sometimes. And the other
6 assistant district attorneys who are employed
7 by the rackets division.

8 Q. Did you become aware at some point
9 that Kevin Richardson was assigned to the
10 Jabbar Collins habeas matter?

11 A. Yes.

12 Q. And when did you become aware of
13 that?

14 A. When he was assigned.

15 Q. And did you have any understanding
16 why he was assigned?

17 A. Yes.

18 Q. What was your understanding?

19 A. I believe Ms. Ferrell had come to
20 me and asked to have a trial assistant
21 assigned along with her.

22 And I said, okay. Who do you
23 want?

24 Q. And she asked you for Mr.
25 Richardson?

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2 A. She asked for Mr. Richardson.

3 Q. And what was Mr. Richardson's
4 position at the time that he was assigned?

5 A. He was a -- he is and was an
6 executive assistant district attorney in the
7 rackets division.

8 Q. And did he have responsibility for
9 any particular area?

10 A. His responsibility was in the
11 official and political corruption unit.

12 Q. And was that unit within rackets?

13 A. Yes.

14 Q. And did he report to you?

15 A. Yes.

16 Q. And are you the one who assigned
17 him to work on the Collins habeas matter?

18 A. No. Monique asked him, and he
19 agreed and he was assigned.

20 Q. Well, did you approve it?

21 A. Oh, yeah, absolutely.

22 Q. Did you discuss his appointment to
23 work on the Collins matter with Mr. Hynes?

24 A. I can't recall.

25 Q. Did you ask Mr. Hynes if it was

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2 okay with him before you approved the
3 assignment?

4 A. I don't have any recollection of
5 that.

6 Q. Did you learn at some point that
7 the District Attorney's office was going to
8 file a document in court disclosing that
9 detective, former Detective Gerecitano had
10 made a statement concerning Edwin Oliva?

11 A. I became aware of Gerecitano's
12 existence and this so-called recantation at
13 some point, yes.

14 Q. And how did you become aware of
15 it?

16 A. Mr. Richardson walked into my
17 office one, either morning or afternoon, and
18 said they were interviewing a detective named
19 Gerecitano, and that he had told them that
20 there had been some sort of notification to
21 him, someone called him to come down to the
22 DA's office because there was a witness named
23 Oliva who had recanted or changed his
24 testimony or changed whatever was said in a
25 DD-5.

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2 And he told -- Richardson told me
3 that Gerecitano came down and spoke to Oliva
4 and that I was told Gerecitano told him -- I
5 know it is a little convoluted -- that he had,
6 he was, he remembered what he had said in his
7 DD-5, and that's what he was prepared to say.

8 Q. And was this the first time that
9 anyone had ever told you that Gerecitano had
10 spoken to Oliva at the District Attorney's
11 office.

12 A. Yes.

13 Q. Do you have any belief about
14 whether or not Gerecitano's statement about
15 speaking to Oliva at the District Attorney's
16 office is true?

17 MR. LARKIN: Objection.

18 A. Do I have any belief? I can't
19 imagine it is true, but I have no opinion one
20 way or the other. I don't know.

21 Q. Do you think that Detective
22 Gerecitano had any reason to lie about that?

23 MR. LARKIN: Objection.

24 A. You have to ask Gerecitano.

25 Q. Were you aware of Detective

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2 Gerecitano's existence before Mr. Richardson
3 told you about his statement?

4 A. Existence in the fact that he is
5 alive and was a detective, is that what you
6 are asking me?

7 Q. Okay.

8 A. He was a homicide detective at
9 some point when I was in the homicide bureau.

10 Q. Were you aware of his existence
11 when you were in the homicide bureau?

12 MS. POLSTEIN: Objection as to
13 form.

14 MR. LARKIN: Objection. I think
15 he just told you that, didn't he?

16 MR. RUDIN: Well, he says now that
17 he was aware.

18 A. Excuse me?

19 Q. At the time that you were handling
20 the Jabbar Collins case, were you aware of
21 Detective Gerecitano's existence?

22 A. Yes.

23 Q. Were you aware that he had played
24 a role in the investigation of the Pollack
25 homicide?

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2 A. Well, I saw DD-5s with his name on
3 them, so yes.

4 Q. Did you ever speak to him in
5 preparation for the trial?

6 A. I don't really have a recollection
7 of having spoken to him.

8 Q. Did you ask anyone to speak to
9 him?

10 A. Not to my recollection, no.

11 Q. Did you obtain his spiral
12 notebook?

13 A. I don't have a specific
14 recollection of that.

15 Q. Well, did you ask anyone to obtain
16 his spiral notebook?

17 MR. LARKIN: Objection.

18 A. I don't have a specific
19 recollection of that either, but that would
20 have been done in the matter of course.

21 Q. Do you have any recollection of
22 disclosing his spiral notebook?

23 A. I have no recollection of that.

24 Q. And when I refer to spiral
25 notebook, do you --

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2 A. If there was one, by the way. I'm
3 not even sure that there was one. I have no
4 recollection of a spiral notebook, quite
5 frankly.

6 Q. Do you have an understanding that
7 detectives generally take notes during the
8 course of an investigation in a spiral
9 notebook?

10 MR. LARKIN: Well, objection.

11 MS. POLSTEIN: Objection as to
12 form.

13 A. No.

14 Q. What was your understanding in
15 1995 about the form in which homicide
16 detectives generally took notes?

17 MR. LARKIN: Objection.

18 A. I don't believe -- I'm sorry, I
19 don't believe that I knew of any specific
20 form. I had seen notes on all kinds of
21 things: spiral notebooks, yellow pads, pieces
22 of paper.

23 Q. At the time of Mr. Collins'
24 prosecution did you attempt to obtain from
25 Detective Gerecitano any of the notes he had

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2 taken during the course of his investigation?

3 A. Well, first of all --

4 MR. LARKIN: Objection.

5 A. -- it presumes that there were
6 notes which I had no recollection of, so I
7 certainly don't have a recollection of asking
8 for notes that I don't have a recollection of.

9 Q. Did you try to find out whether
10 there were notes that Mr. Gerecitano had
11 taken?

12 MR. LARKIN: Objection.

13 A. I don't have any recollection of
14 that.

15 Q. Did you ask anyone to find out if
16 Detective Gerecitano had any notes in
17 connection with his involvement in the
18 investigation?

19 A. I don't recall.

20 MR. LARKIN: Objection.

21 Q. While Mr. Richardson was involved
22 in handling your office's response to Mr.
23 Collins' habeas motion, did he keep you
24 informed of the progress of the case?

25 MR. LARKIN: Objection.

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2 A. I don't have any recollection of
3 being kept informed of the progress other than
4 we're going to court today, this hearing is
5 on, that hearing is on, but no details about
6 what occurred. I was specifically kept out of
7 it for the most part.

8 Q. Did Mr. Richardson ever speak with
9 you about what happened in court on any
10 particular occasion?

11 A. I don't recall.

12 Q. Did you discuss the Jabbar Collins
13 case with Mr. Hynes on any occasion before the
14 office agreed to the habeas relief?

15 A. No.

16 Q. Did anyone ask you about your
17 opinion about whether or not the office should
18 agree to habeas relief for Mr. Collins before
19 the office did so?

20 A. No.

21 Q. Did you ever discuss that subject
22 matter with any attorney for the office?

23 A. No, not to my recollection.

24 MR. LARKIN: Objection to form.

25 MR. RUDIN: Have this marked,



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2 please.

3 (Plaintiff's Exhibit 164,
4 e-mail dated May 25th, 2010 bearing
5 Bates No. 209 marked for
6 identification, as of this date.)

7 MR. RUDIN: I don't have another
8 copy of it.

9 MR. LARKIN: Okay.

10 A. Okay.

11 MS. KRASNOW: Wait a minute.

12 Q. Exhibit 164 is Bates stamped 209.

13 And it appears to be an e-mail on May 25th,
14 2010. Is that right?

15 A. Two e-mails, yeah.

16 Q. Two e-mails. The first e-mail you
17 e-mailed Mr. Richardson on the same date and
18 he said what's happening?

19 A. Ah-hah.

20 Q. And he responded: "In Amy's
21 office now." Is that a reference to Amy
22 Feinstein?

23 A. I would assume so, but I -- yeah,
24 I assume so.

25 Q. What is her position?



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2 A. She is chief assistant district
3 attorney.

4 Q. So she is No. 2 in the office?

5 A. Yes.

6 Q. And he then writes: "Judge is
7 thinking strongly about having a hearing. All
8 three of us think the hearing will be granted.
9 Due back in court at 2:30. I'll stop by if I
10 can. Otherwise, I will see you afterwards."

11 A. Okay.

12 Q. Did you see him afterwards?

13 A. I have no recollection of seeing
14 him afterwards, I don't know.

15 Q. Did you discuss with Mr.
16 Richardson what was discussed in Amy's office?

17 A. I don't recall.

18 MR. RUDIN: Mark this, please.

19 (Plaintiff's Exhibit 165,
20 e-mail bearing Bates No. 233 marked
21 for identification, as of this
22 date.)

23 MR. RUDIN: What's the Bates stamp
24 at the bottom of that?

25 MR. LARKIN: 233.

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2 Now, let me just make sure these
3 are the right ones here. We did show
4 the witness an unredacted copy of this
5 particular e-mail for purposes of
6 preparation and completeness, and so we
7 have a copy and can turn it over today
8 and you can question him about it, of
9 course. Simply because it is hard to
10 understand the context of what is said
11 in these e-mails, unless you have the
12 whole communication. So we can mark
13 this if you like. I will give it to you
14 right now.

15 MR. RUDIN: Thank you.

16 MR. LARKIN: Take your time and
17 look at it if you want to.

18 MS. POLSTEIN: I would just ask, I
19 don't know how it works with your
20 office, if there is a litigation hold or
21 if the request for e-mails is a
22 continuing request or if it has been cut
23 off at some point. I don't know what
24 the discovery demand was.

25 MR. LARKIN: So what do you want



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2 to know?

3 MS. POLSTEIN: These were part of
4 the DA's file? They were disclosed
5 initially as part of the DA's file, or
6 was there a separate request for
7 electronic communications?

8 MR. LARKIN: I think it was
9 separate and we turned them over within
10 the last week or two.

11 MS. POLSTEIN: So I don't have
12 that?

13 MR. LARKIN: So they are not on
14 the disk.

15 MR. RUDIN: All right. Is this
16 the only copy you have right now?

17 MR. LARKIN: It's the only one.

18 MR. RUDIN: Then why don't we have
19 this marked.

20 MR. LARKIN: You can mark it,
21 sure.

22 (Plaintiff's Exhibit 166,
23 unredacted version of Exhibit 165
24 marked for identification, as of
25 this date.)

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2 Q. All right. Mr. Vecchione, have
3 you reviewed this document recently, or do you
4 need to review it now?

5 A. I've reviewed it.

6 Q. Do you want to review it again?

7 A. I don't remember if it was
8 yesterday or the day before.

9 Q. Do you want to see it again?

10 A. Yeah, just let me see it quickly,
11 let me just make sure.

12 Q. Then I will just need it back so I
13 can question you about it.

14 A. Yeah, I have to tell you that it
15 is extremely difficult to read in this light
16 here so.

17 Q. Well, I can read it out loud into
18 the record or otherwise.

19 A. You can ask me questions. I
20 recall now what it says.

21 Q. May I have it please?

22 A. Sure.

23 Q. So this is an e-mail string that
24 occurred on June 2, 2010. Is that right?

25 A. Give me the one that is redacted

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2 so I will be able to answer those pro forma
3 questions that way.

4 This looks like it says June 2nd,
5 2010, yes.

6 Q. All right, so the first e-mail --

7 A. Well, the final one does. It
8 starts June 2nd, I don't know, is that 18:24?

9 Q. Yes.

10 A. I can't see it. Okay.

11 Q. So that indicates Mr. Richardson
12 sent you an e-mail: "The meeting with Amy is
13 tomorrow at 10 a.m."

14 A. That's what it says, yes.

15 Q. And you respond "cool"?

16 A. That's what I said.

17 Q. And then there is an e-mail on
18 June 2nd at 18:50 hours from Mr. Richardson to
19 you?

20 A. From -- it says 18:50 or 6:50.
21 Doesn't it say 6:50?

22 Q. It says 18:50 hours which would be
23 6:50.

24 MR. LARKIN: For the record, the
25 witness is looking at 164. Joel, you

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2 have 165. So they might have been
3 printed at different times or from
4 different searches.

5 Q. Not the one on top, the one below
6 that, the long e-mail. It says 18:50 hours?

7 A. Yes. I'm sorry. I was looking at
8 the wrong one.

9 Q. And in that e-mail from Mr.
10 Richardson to you at 18:50 hours, he makes
11 some comments to you about Monique Ferrell?

12 A. Yes.

13 Q. And at the end of those comments
14 he asks you to speak to her?

15 A. That's what it says.

16 Q. Did you speak to her about the
17 subject matter of this e-mail?

18 A. You know, as I sit here today, I
19 have no recollection of it.

20 Q. And one of the things that Mr.
21 Richardson writes to you in this e-mail is
22 that, she, referring to Monique, is also
23 convinced that Jon lied to her about this case
24 four years ago when she interviewed him in
25 responding to the 440, thus thinks his opinion

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2 of the case is based on something other than
3 his honest evaluation of the facts.

4 Do you know what Mr. Richardson
5 was referring to?

6 A. Not in the slightest.

7 Q. Did you ever ask Mr. Richardson
8 what he meant when he wrote that she believed
9 that Jon lied to her about this case?

10 MR. LARKIN: Objection.

11 A. Not that I can recall.

12 Q. Did you ever ask Jon Besunder what
13 that might have involved?

14 A. No.

15 Q. Did you understand that she was
16 referring to Jon Besunder?

17 A. Does it say J-O-N?

18 Q. J-O-N.

19 A. Well, then I would assume it was
20 Jon Besunder. Unless it was Jon Voight.

21 Q. So as you sit here now you have no
22 idea what it was that Kevin Richardson was
23 referring to when he wrote this?

24 A. No.

25 Q. Do you see at the top, near the

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2 top of this e-mail above, in response to Mr.
3 Richardson's e-mail to you, you wrote "I'll
4 take care of it tomorrow."

5 A. I did write that.

6 Q. Did you take care of it?

7 A. I don't recall.

8 MR. LARKIN: Objection to the
9 form.

10 Q. Do you customarily read the New
11 York Law Journal?

12 A. Yeah, I would say so.

13 Q. Do you customarily read The New
14 York Times?

15 A. No.

16 Q. Are there any newspapers besides
17 the Law Journal that you customarily read?

18 A. The Daily News and The New York
19 Post, occasionally Newsday.

20 Q. Did you become aware of any press
21 reports concerning the Jabbar Collins habeas
22 proceeding that Judge Irizarry had made
23 comments during that proceeding that were
24 critical of you?

25 A. Do I know that?

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2 MR. LARKIN: Objection.

3 Q. Did you learn that from press
4 reports at the time?

5 MR. LARKIN: Objection.

6 A. Yes.

7 Q. And after you learned that Judge
8 Irizarry had made such comments, did Mr. Hynes
9 at any point discuss her comments with you?

10 A. Not that I can recall.

11 Q. Has he ever discussed her
12 comments, with you?

13 A. I don't recall. I really don't.

14 Q. Has Mr. Hynes ever asked you to
15 explain any of your conduct in the Jabbar
16 Collins case?

17 MR. LARKIN: Objection to that.
18 Go ahead.

19 A. No.

20 Q. Has he ever asked you to respond
21 to any allegations that have been made against
22 you in regard to the Jabbar Collins case?

23 MR. LARKIN: Objection. Answer.

24 A. Not that I can recall.

25 Q. Has Amy Feinstein ever asked you

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2 to respond to any allegations that were made
3 against you in the Jabbar Collins case?

4 A. Not that I can recall.

5 Q. Did anyone at an executive level
6 in the District Attorney's office ever ask you
7 to respond to any allegations that have been
8 made against you in connection with the Jabbar
9 Collins case?

10 A. Not that I can recall.

11 Q. Are you aware of any investigation
12 that has ever been made by the office since
13 Judge Irizarry's comments at the habeas
14 proceedings concerning your conduct in the
15 Jabbar Collins case?

16 A. Am I aware --

17 MR. LARKIN: Objection to the
18 form.

19 A. Am I aware of any?

20 Q. Yes.

21 A. No.

22 MR. RUDIN: Mark this, please.

23 (Plaintiff's Exhibit 167,
24 series of e-mails concerning the
25 CBS show Brooklyn DA, bearing Bates

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2 Nos. 1-15 and 37420-434 marked for
3 identification, as of this date.)

4 A. Okay.

5 Q. Mr. Vecchione, I have shown you
6 what has been marked as Plaintiff's 167 which
7 is a series of e-mails concerning the CBS show
8 Brooklyn DA. It is Bates stamped 1 through
9 15. Do you see that?

10 A. I do. It is stamped that, yes.
11 But I can't read the Bates stamp. It is too
12 small.

13 Q. It is Bates stamped CBS 1 through
14 15 and the numbers in discovery in this case
15 are Plaintiff's 37420 through 37434.

16 A. Okay.

17 Q. I would like to ask you a few
18 questions about this show on CBS.

19 When did you first learn that CBS
20 had any kind of interest in doing a show about
21 the Brooklyn DA's office?

22 A. Some time towards the end of 2012
23 I believe.

24 Q. And how did you learn that?

25 A. Jerry Schmetterer told me that

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2 Patti Aronofsky wanted to speak to us about
3 her -- an idea for a show.

4 Q. And who is Jerry Schmetterer?

5 A. Our public information officer.

6 Q. And did you in fact have a meeting
7 with any representatives of CBS about the
8 show?

9 A. I had a meeting first with Patti
10 Aronofsky at lunch where she kind of told us
11 what her idea was.

12 I recall a second meeting some
13 time later than that, I don't remember when it
14 was, with Susan Zirinsky who was I think her
15 boss, about the idea for the show.

16 Q. Who was present at the Patti
17 Aronofsky meeting, the first one?

18 A. The first one?

19 Q. Yes.

20 A. She, Jerry and I.

21 Q. Who was present at the Susan
22 Zirinsky meeting?

23 A. The same three, with the addition
24 of Zirinsky.

25 Q. During either meeting was the

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2 Jabbar Collins case discussed?

3 A. No.

4 Q. Have you ever discussed the Jabbar
5 Collins case with either -- with any producer
6 for CBS?

7 A. I've discussed it not with the
8 name of Jabbar Collins, but I've discussed
9 allegations that were made against me with
10 Liza Finley.

11 Q. Who is Liza Finley?

12 A. A producer in the show.

13 Q. When did you discuss those
14 allegations with Liza Finley?

15 A. Well, when you say discuss,
16 questions were asked of me and I gave answers.

17 Q. Were those questions asked of you
18 on camera?

19 A. There was a camera there, yes.

20 Q. When did that occur?

21 A. I don't recall.

22 Q. Well, was it within --

23 A. Months ago, I don't remember.

24 Q. What questions were you asked?

25 A. Said there are allegations that

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2 you have essentially -- I'm going to not
3 verbatim but in general -- buried evidence and
4 what's your response?

5 Said never happened.

6 Said that you buried information
7 regarding a recantation.

8 And my answer was it never
9 happened.

10 Allegations that you threatened a
11 witness. I'm not sure if she talked about
12 that ridiculous coffee table thing, but I said
13 that never happened.

14 They said that -- I guess that's
15 it with regard to this, to this case. But I
16 never mentioned the name of Mr. Collins, and I
17 don't recall them mentioning it to me during
18 the course of that filming.

19 Q. And do you know whether or not
20 that, those questions and answers that you
21 just told us about are going to be on air?

22 A. I have no idea.

23 Q. At any point have you discussed
24 the subject of the Brooklyn DA show with Mr.
25 Hynes?

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2 A. Of course we did.

3 Q. When was the first time you
4 discussed it?

5 A. After the lunch that we had with
6 Zirinsky.

7 Q. Not after the lunch with
8 Aronofsky?

9 A. No, after the lunch with Zirinsky,
10 because we didn't know what the idea was
11 until -- it was a general idea, but we didn't
12 know what the idea was until we spoke to
13 Zirinsky.

14 Q. Was there ever any discussion with
15 any representatives of CBS about payment in
16 exchange for the show?

17 MR. LARKIN: Objection, come on.
18 Go ahead.

19 A. None whatsoever.

20 Q. After the meeting with Ms.
21 Zirinsky, what did you discuss with Mr. Hynes?

22 A. The best of my recollection we
23 went, Jerry Schmetterer and I went to speak to
24 Mr. Hynes and told him what CBS had in mind.
25 Asked if he would be interested in speaking to

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2 them.

3 He said that he would and he would
4 be interested in the show. And a meeting was
5 set up for Mr. Hynes and Susan Zirinsky and
6 Patti Aronofsky.

7 Q. Did you discuss with Mr. Hynes
8 that your conduct in the Jabbar Collins case
9 might come up in the show?

10 A. No.

11 Q. When you met with Mr. Hynes --

12 A. Or, excuse me. When? At that
13 time?

14 Q. Yes, at that time.

15 A. I wasn't even sure there was going
16 to be a show.

17 Q. At any time?

18 MR. LARKIN: Objection. So at any
19 time has Mr. Vecchione spoken to DA
20 Hynes about whether or not the Collins
21 case will come up on the program?

22 MR. RUDIN: Yes.

23 MR. LARKIN: All right.

24 A. I don't recall. I don't recall.

25 Q. Did you attempt to persuade Mr.

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2 Hynes to agree to the show?

3 MR. LARKIN: Form objection.

4 A. I wouldn't call it persuade, no, I
5 don't think so.

6 Q. Well, if you turn to the second
7 page of the exhibit I just showed you.

8 A. Sure.

9 Q. That's 167.

10 A. Sure.

11 Q. Do you see that there is an e-mail
12 from Jerry Schmetterer to Patti Aronofsky and
13 she cc's you?

14 A. Yes.

15 Q. "Mike and I met with the DA,
16 things went well, we sold him on it. Of
17 course, you need to come in and speak with
18 him. I do think the four of us should meet
19 once more before you see him. When are you
20 available directly after the New Year?"

21 A. I see that.

22 Q. Is that an accurate statement that
23 you sold Mr. Hynes on the idea of the show?

24 MR. LARKIN: Objection to the
25 form.

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2 A. What we did was we informed him of
3 what the idea was and explained it to him, and
4 he agreed to meet with Zirinsky. Those are
5 not my words.

6 Q. Well, did either you, or Mr.
7 Schmetterer in your presence, try to convince
8 Mr. Hynes to agree to the show?

9 A. Try --

10 MR. LARKIN: Just objection to
11 form. Did -- well, objection to form.
12 Sorry, go ahead.

13 A. We did not in my presence, no.

14 Q. Did anyone in your presence
15 express any reservations about approving the
16 show?

17 A. Not that I can recall.

18 Q. Now, when you met with your
19 attorneys in the presence of Mr. Amoroso and
20 Ms. Lichstein prior to your testimony today,
21 did you review any of the testimony of any of
22 the other witnesses?

23 A. Did not.

24 MS. POLSTEIN: Objection as to
25 form. You mean who testified in

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2 depositions?

3 A. Yes, what testimony?

4 MR. LARKIN: Are you talking about
5 depositions in the civil case or
6 testimony in the criminal case?

7 Q. No, the depositions in the civil
8 case?

9 A. Oh, no.

10 MR. LARKIN: What was the answer?

11 THE WITNESS: The answer was no.

12 Q. Did you discuss the subject of the
13 affirmations and affidavits that were signed
14 in your name by someone other than you?

15 MR. LARKIN: Objection. I mean he
16 has told you what he reviewed. He can't
17 tell you what he discussed.

18 MR. RUDIN: Well, normally, no, I
19 don't think there is any attorney-client
20 privilege when the conversations were in
21 front of individuals who are not his
22 attorney.

23 MR. LARKIN: You can't possibly be
24 serious about that.

25 MR. RUDIN: I'm totally serious.

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2 ^ MR. LARKIN: Well, there is an
3 objection and I'm going to instruct the
4 witness not to answer any questions
5 about conversations with us, whether or
6 not Mr. Amoroso and Ms. Lichstein were
7 present.

8 MR. RUDIN: And I assume your
9 instruction would be the same if I asked
10 him any questions about the content of
11 the conversations that occurred in their
12 presence.

13 MR. LARKIN: Any conversations
14 with Ms. Krasnow and myself, yes.

15 Separate conversations between Mr.
16 Vecchione and Mr. Amoroso and/or Ms.
17 Lichstein when Ms. Krasnow and I were
18 not present, I don't know that there
19 would be any privileged area, but with
20 respect to conversations when Ms.
21 Krasnow and I were present, I think,
22 sure, there is a privilege there.

23 MR. RUDIN: Well, but I'm asking
24 about conversations when they were
25 present. He testified that you had a

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2 series of meetings that --

3 MR. LARKIN: Correct.

4 MR. RUDIN: -- went on quite some
5 time when they were present.

6 MR. LARKIN: Right.

7 MR. RUDIN: So that's what I'm
8 asking about.

9 MR. LARKIN: All right. There is
10 a privilege that attaches to those
11 meetings.

12 MR. RUDIN: All right, just so we
13 don't waste a lot of time, are you
14 instructing your client not to answer
15 any questions that seek to find out the
16 content of those conversations?

17 MR. LARKIN: Sure. Absolutely.

18 MR. RUDIN: Okay.

19 MS. POLSTEIN: Well, I'm probably
20 going to mark that for a ruling at some
21 point.

22 (Discussion off the record.)

23 Q. Are there any other e-mails that
24 you reviewed with Mr. Larkin or Ms. Krasnow
25 where we were provided those e-mails in a

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2 redacted form and you reviewed the unredacted,
3 if you know?

4 A. I remember one e-mail that was in
5 redacted form, the one that we discussed
6 before.

7 MR. RUDIN: Well, maybe I should
8 ask you this.

9 MR. LARKIN: The representation
10 would be no

11 MR. RUDIN: Okay.

12 Q. Did you review an e-mail from June
13 3rd, 2010 involving an exchange between ADA
14 Richardson and yourself concerning a meeting
15 with former ADA Frascogna?

16 A. I don't recall such a -- reviewing
17 anything.

18 Q. Well, do you recall any e-mail
19 between ADA Richardson and yourself concerning
20 a meeting with former ADA Frascogna?

21 A. No.

22 MR. LARKIN: Objection. Do you
23 want to show it to him?

24 MR. RUDIN: I don't have the
25 e-mail. It's on the privilege log. I

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2 can have the privilege log marked.

3 MS. POLSTEIN: I just asked for a
4 privilege log and I was told there
5 wasn't any.

6 MR. RUDIN: It is hot off the
7 presses.

8 MS. POLSTEIN: Really?

9 MR. RUDIN: Well, within a couple
10 of days.

11 MR. LARKIN: A couple of days.

12 MS. POLSTEIN: Well, I asked for
13 it Monday and Tuesday.

14 MR. LARKIN: So you want a copy of
15 the privilege log; we will get it to
16 you.

17 MS. POLSTEIN: It would have been
18 nice when I was going through 50,000
19 documents that were in individual PDFs,
20 it was an unbelievable undertaking that
21 duplicated or couldn't -- it was
22 impossible to tell whether it duplicated
23 their 36,000 pages. When this
24 deposition came about last week, yes, it
25 would have been very nice to have a

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2 privilege log, and I repeatedly e-mailed
3 whether or not there was any index
4 because I couldn't imagine that you
5 would redact documents and produce them
6 and there was no record of what was
7 produced.

8 MR. LARKIN: Let's back up and
9 speak English here.

10 Privilege log doesn't relate to
11 36,000 pages that we sent you which
12 consists of the DA's file in the case.

13 So we will be more than happy to
14 send you a copy of the privilege log.

15 MS. POLSTEIN: Thank you. I
16 believe it is English that a privilege
17 log is generated when you go through
18 documents and you determine which of
19 those documents you are going to
20 withhold.

21 MR. LARKIN: Okay.

22 MS. POLSTEIN: So the generation
23 of that, there must be something --
24 whatever. I think I was pretty clear.

25 MR. RUDIN: Can we have this

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2 marked, please.

3 (Plaintiff's Exhibit 168,
4 privilege log marked for
5 identification, as of this date.)

6 MR. RUDIN: Do you have a copy of
7 the privilege log with you?

8 Q. Mr. Vecchione, I'm directing your
9 attention to items 27 and 28.

10 MR. RUDIN: Do you want to see it,
11 Janet, first before I question him?

12 MS. POLSTEIN: Well, I mean, look,
13 I'm going to have obviously -- the
14 deposition is not over; we haven't
15 really coordinated. I just request the
16 privilege log and we will take it from
17 there. I mean, it doesn't do me any
18 good now.

19 A. Okay, I have seen it.

20 Q. Does No. 27 on that exhibit --

21 MR. RUDIN: What exhibit is that,
22 what number?

23 THE COURT REPORTER: 168.

24 Q. Does item 27 in that exhibit
25 refresh your recollection, first of all, that

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2 you received an e-mail on June 3rd from ADA

3 Richardson concerning another ADA?

4 A. No.

5 Q. Do you know who the other ADA is?

6 A. No.

7 Q. And No. 28 June 3, 2010 e-mail

8 exchange between ADA Richardson and ADA

9 Vecchione concerning a meeting with former ADA
10 Frascogna.

11 Does that refresh your
12 recollection about any such e-mail?

13 A. I'm sorry?

14 Q. Does that refresh your
15 recollection about any such e-mail?

16 A. No.

17 Q. Do you recall having any
18 discussion with ADA Richardson concerning any
19 meeting that he had with former ADA Frascogna?

20 A. I don't recall it.

21 MR. RUDIN: Let's go off the
22 record for a minute.

23 MR. LARKIN: Well, let's just stay
24 on the record. And, Janet, we will hand
25 you a copy of the privilege log which

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2 Mr. Rudin was kind enough to provide us.
3 So you can have that copy if you would
4 like.

5 MS. POLSTEIN: Thank you. But are
6 you off the record.

7 THE VIDEOGRAPHER: Do you want to
8 go off the record.

9 MR. LARKIN: We can stay on the
10 steno record if you like.

11 THE VIDEOGRAPHER: We are now
12 going off the record approximately 4:54
13 p.m.

14 MR. RUDIN: I want to speak to my
15 colleagues about what I have done.

16 MR. LARKIN: If you have a concern
17 you want to articulate on the steno
18 record.

19 MS. POLSTEIN: No, we can be off.

20 (Discussion off the record.)

21 THE VIDEOGRAPHER: We're going
22 back on the record approximately 4:57
23 p.m.

24 MR. RUDIN: All right. I don't
25 have any further questions today. The

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2 deposition is being held open to
3 complete the other areas that we have,
4 we agreed in court would be done at the
5 next deposition.

6 MR. LARKIN: Fair enough. We have
7 no questions.

8 May I ask the videographer how
9 long were we on the video cumulative?

10 THE VIDEOGRAPHER: Do you want me
11 to tell you when we get off?

12 MR. LARKIN: Fair enough. Good
13 enough.

14 MS. POLSTEIN: I will just state
15 it has come to light very late that I
16 didn't have e-mails and there is a
17 privilege log and you know at some other
18 point, it is too late today, but we
19 should discuss the cases are not
20 coordinated and that's fine, but I'm
21 really just being included on sort of an
22 ad hoc basis where I learned some
23 depositions and not others, I don't have
24 deposition exhibits, I don't have
25 deposition transcripts of everything you

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2 have taken. I'm not included on
3 correspondence. So, you know, then we
4 will just keep the two cases separate
5 and redo what we have to redo.

6 MR. RUDIN: Well, I think we have
7 informed you of all the depositions that
8 have been scheduled, and some of them
9 you haven't been able to attend.

10 MS. POLSTEIN: Well, because I'm
11 not consulted as to the date. I'm told
12 when they are going to be.

13 MR. RUDIN: Anyway, we are
14 finished.

15 THE VIDEOGRAPHER: We are now
16 going off the record approximately 4:58
17 p.m.

18 (Time noted: 4:58 p.m.)
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MICHAEL F. VECCHIONE

Subscribed and sworn to before me
this _____ day of _____, 2013.

Notary Public

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C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

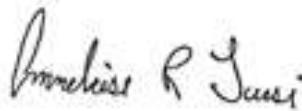
COUNTY OF NEW YORK)

I, ANNELIESE R. TURSI, a
Registered Professional Reporter and Notary
Public within and for the State of New York,
do hereby certify:

That the witness whose deposition
is hereinbefore set forth, was duly sworn by
me and that such deposition is a true record
of the testimony given by the witness.

I further certify that I am not
related to any of the parties to this action
by blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 27th day of
June, 2013



ANNELIESE R. TURSI, RPR

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DEPOSITION ERRATA SHEET

Esquire Deposition Assignment No. 335389

Case Caption: Collins v. The City of New York

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the _____ day of

_____, 20____

MICHAEL F. VECCHIONE

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DEPOSITION ERRATA SHEET

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Reason for change: _____

SIGNATURE: _____ DATE: _____

MICHAEL F. VECCHIONE

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DEPOSITION ERRATA SHEET

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SIGNATURE: _____ DATE: _____

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I N D E X

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E X H I B I T S

FOR IDENTIFICATION	PAGE
Plaintiff's Exhibit 147, 6-page document, dated July 6, 1993 on first page, Re: People v. Cisero Murphy	24
Plaintiff's Exhibit 148, Answer in Omnibus Motion in The People of the State of New York v. Shlomo Helbrans, Malka Helbrans, Mordechai Weisz	63
Plaintiff's Exhibit 149, document entitled Discovery/Rosario in The People of the State of New York v. Clarence Norman, Jr.	66
Plaintiff's Exhibit 150, three-page document containing Article 620, Securing Attendance of Witnesses by Material Witness Order	79
Plaintiff's Exhibit 151, Memorandum dated May 22, 1997, bearing Bates Nos. NYC894-906	88
Plaintiff's Exhibit 152, Memorandum dated May 11, 1992, bearing Bates Nos. KCDATRAIN 406-408	91

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Plaintiff's Exhibit 153, Memorandum dated February, 1994, Re: Duty to Disclose Under Rosario and Brady, bearing Bates Nos. KCDATRAIN 042-62	93
Plaintiff's Exhibit 154, handwritten document bearing Bates Nos. NYC40969-70	169
Plaintiff's Exhibit 155, two-page handwritten notes	170
Plaintiff's Exhibit 156, document entitled Custody Reservation Request from the DA's office	223
Plaintiff's Exhibit 157, document regarding Crown Plaza Hotel room reservations	224
Plaintiff's Exhibit 158, document dated May 12, 1993 bearing Bates Nos. P-021003-004	230
Plaintiff's Exhibit 159, document bearing Bates Nos. 10306-309	234
Plaintiff's Exhibit 160, document bearing Bates Nos. 10299-302	244
Plaintiff's Exhibit 161, document bearing Bates Nos. 10314 and 0578	251
Plaintiff's Exhibit 162, document bearing Bates Nos. 9401-02	285
Plaintiff's Exhibit 163, document bearing Bates Nos. 9393-94	288
Plaintiff's Exhibit 164, e-mail dated May 25th, 2010 bearing Bates No. 209	317

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FOR IDENTIFICATION	PAGE
Plaintiff's Exhibit 165, e-mail bearing Bates No. 233	318
Plaintiff's Exhibit 166, unredacted version of Exhibit 165	320
Plaintiff's Exhibit 167, series of e-mails concerning the CBS show Brooklyn DA, bearing Bates Nos. 1-15 and 37420-434	327
Plaintiff's Exhibit 168, privilege log	342

DIRECTION NOT TO ANSWER: P/L
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